NOTIFICATION TO VICTIMS OF IMPROPER INTELLIGENCE AGENCY ACTIVITIES

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 12039, H.R. 13192, and H.R. 169

TO AMEND THE PRIVACY ACT OF 1974

APRIL 28 AND MAY 11, 1976

Printed for the use of the Committee on Government Operations

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NOTIFICATION TO VICTIMS OF IMPROPER INTELLIGENCE AGENCY ACTIVITIES

WEDNESDAY, APRIL 28, 1976

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. Bella S. Abzug (chairwoman of the subcommittee) presiding.

Present: Representatives Bella S. Abzug, John Conyers, Jr., Michael Harrington, Andrew Maguire, Sam Steiger, Clarence J. Brown, and Paul N. McCloskey, Jr.

Also present: Timothy H. Ingram, staff director; Eric L. Hirschhorn, counsel; Theodore J. Jacobs, professional staff member; Robert S. Fink, professional staff member; Anita Wiesman, clerk; and Thomas K. Sullivan, minority professional staff, Committee on Government Operations.

Ms. ABZUG. The hearing will come to order. I ask unanimous consent that the hearings be televised and broadcast.

Mr. STEIGER. I object, Madam Chairwoman, and move that the television be removed from the room summarily.

Ms. ABZUG. A motion has been made to have the television equipment removed from the room.

All of those in favor, signify by saying, "Aye."

(Ayes.)

Ms. ABZUG. Opposed, "No."

(Noes.)

Mr. STEIGER. Rollcall, Madam Chairwoman.

Ms. ABZUG. Will the clerk call the roll, please. The motion, as I understand it, is to remove the television.

CLERK. Chairman Abzug.

Ms. ABZUG. I vote "No."

CLERK. Congressman Ryan.

Mr. RYAN. (No response.)

CLERK. Congressman Conyers.

Mr. CONYERS. No.

CLERK. Congressman Macdonald.

Mr. MACDONALD. (No response.)

CLERK. Congressman Moss.

Mr. MOSS. (No response.)

CLERK. Congressman Harrington.

Mr. HARRINGTON. No.
CLERK. Congressman Maguire.
Mr. MAGUIRE. (No response.)
CLERK. Congressman Moffett.
Ms. ABZUG. "No," by proxy.
CLERK. Congressman Steiger.
Mr. STEIGER. Aye.
CLERK. Congressman Brown.
Mr. BROWN. No.
CLERK. Congressman McCloskey.
Mr. MCCLOSKEY. No.
Ms. ABZUG. Would you please report the vote.
CLERK. Six "noes" and one "aye."
Ms. ABZUG. The vote is six "noes" and one "aye." The motion is defeated.

The hearing will now continue.

The subcommittee today begins consideration of an extremely timely and important subject—the rights of individuals who were subjected to surveillance and harassment by programs such as the FBI's Cointelpro and the CIA's Chaos.

We have before us H.R. 169, H.R. 13192, and H.R. 12039, which would require that all who were objects or subjects of such programs be provided with notice that the Government maintains files on them and that they have a right to have such files destroyed.

Related to this matter, and another subject of these hearings, is the impending resumption by the intelligence agencies of their programs of destruction of documents. We are frankly concerned that before Congress can act on H.R. 169 and H.R. 12039—the bills before us which would require notification—the agencies may dispose of the evidence of past wrongdoing. Several agencies have indicated their strong desire to resume destruction of documents now that the Pike and Church committees have reported. We have asked them not to do so, at least until Congress can act on this or similar legislation to notify the victims of improper activities.

It is now common knowledge that the FBI and CIA, among other agencies, have in the past three decades engaged in many improper or illegal interferences with the rights of innocent individuals who were merely exercising the rights guaranteed to them by the Constitution.

These invasions took several forms, from illegal mail openings and burglaries to elaborate programs of harassment and disruption such as the "Special Service Section" of Internal Revenue and the FBI's Cointelpro, to the monitoring of international cable traffic, to extensive programs of data collection and dissemination such as the CIA's Chaos program.

The bills to be considered today would require that every person and organization who is named in an index or the subject of a file concerning any of these programs and certain other activities such as illegal wiretaps, mail openings, or break-ins—that every such person or organization be informed that there is a file or reference to him or her, that he or she has certain rights under the Freedom of Information Act and the Privacy Act, and that he or she has a right to have expunged such files or references which violate the Privacy Act.

The purpose of these hearings is to ascertain whether legislation which presently exists should be amended. It may be necessary, for example, to expand the programs and activities covered by the bills to include forms of harassment and interference with individual rights not covered by arbitrary program designations such as Cointelpro or Chaos.

Our concern is not to interfere with any legitimate law enforcement or foreign intelligence activity of these agencies, but solely to require that the domestic subjects of unlawful programs and activities be notified and be informed of their rights under the law.

We will be considering a number of programs which the record already indicates constitute illegal maintenance of files and activities concerning the rights of American citizens. They include information which is gathered through illegal methods of mail openings, burglaries, warrantless surveillance, monitoring of international communications, the Chaos program, the Cointelpro program, and the "Special Service Section" of Internal Revenue.

The Attorney General recently announced a limited program of notifying victims of Cointelpro. We will want to discuss that program with the Justice Department witnesses here today.

We also wish to discuss with our first witness today, George Bush, how the CIA intends to protect and notify those individuals on whom there is significant evidence that many files and items of information have been collected illegally.

The Privacy Act presently requires that no Federal agency may maintain files on individuals which are not accurate, relevant, timely, and complete. Also, no agency may maintain records describing how any individual exercises first amendment rights. These were the provisions of the act recently utilized in the expungement of the content of the taps and surveillance conducted against columnist Joseph Kraft. But thousands of other Americans are the subjects of improperly gathered materials about which they are unaware. The bills under consideration here would provide that notice be given, and would make clear that the individual has the right to have improper records expunged.

This hearing and subsequent hearings will attempt to ascertain the extent and nature of the files maintained and will attempt to ascertain from the appropriate agencies what they intend to do about remedying the serious invasions of individual rights. They will also attempt to ascertain the extent and nature of the files maintained by the various intelligence agencies on the subjects of our bills. This is so that we can be certain that when we do produce legislation, it will indeed attempt to remedy some very serious invasions which by now everybody admits were incorrect.

The bill also eliminates the specific exemption the Privacy Act presently gives the Secret Service and the CIA. When the Privacy Act was passed, we did not have the information that we presently have—namely, that there were categories of domestic activity that the CIA and the Secret Service were engaging in in violation of both the Constitution and the rights of privacy.

It is the opinion of many, including the chairwoman of this committee who opposed a general, broad exemption at that time because of some idea and suspicion that there were indeed these illegal activi-

ties which have subsequently been proven, that it would be important to give the CIA and the Secret Service the same kinds of exemptions of confidentiality, the protection of foreign policy questions, and the protection of criminal law enforcement files as the other agencies received.

No other agency has a blanket exemption under the Freedom of Information Act and no other agency has a blanket exemption under the Privacy Act except for the CIA and the Secret Service. And while we want to protect their essential work which is necessary in order to conduct their authorized activities, we do not wish to continue, it would seem to me, an exemption of activities that were illegally conducted against and in violation of the Constitution, the criminal laws of this country, and the right to privacy of citizens.

At this point in the record, we will include the text of the bills before us and the Privacy Act of 1974.

[The bills follow:]

94TH CONGRESS
2D SESSION

H. R. 12039

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1976

Ms. ABZUG introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 552a of title 5, United States Code, is amended—

(1) by striking out subsection (d) (2) (B) (i) and inserting in lieu thereof the following:

"(i) correct, expunge, update, or supplement any portion thereof which the individual believes is not accurate, relevant, legally maintained, timely, or complete; or";

(2) by striking out "and" at the end of paragraph (10) of subsection (e), by striking out the period at

the end of paragraph (11) of such subsection and inserting in lieu thereof "; and", and by inserting immediately thereafter the following new paragraph:

"(12) inform each person who was—

"(A) the sender or receiver of any written communication, or communication by wire, cable, radio, or other means which was intercepted, recorded, or otherwise examined, by such agency, or any officer or employee thereof, without a search warrant, or without the consent of both the sender and receiver; or the occupant, resident, or owner of any premises or vehicle which was the subject of any search, physical intrusion, or other trespass, by such agency, or any officer or employee thereof, without a search warrant, or without the consent of such person;

"(B) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program known as CHAOS, which operation or program is described in the report, dated June 1975, to the President by the Commission on CIA Activities Within the United States;

"(C) the subject of a file or named in an index

created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program known as "Counter-intelligence Program" or "COINTELPRO", which operation or program is described in the Statement of Hon. William B. Saxbe, and the hearings of Subcommittee of the House Judiciary Committee on November 20, 1974;

"(D) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program of the Internal Revenue Service known as "The Special Service Staff", which operation or program is described in the Joint Committee on Internal Revenue Taxation Committee Print entitled "Investigation of the Special Service Staff of the Internal Revenue Service" dated June 5, 1975;

that he, she, or it is or was such a person, provide each such person with a clear and concise statement of such person's rights under this section and section 552 of this title, and provide each such person with the option of requiring that agency to destroy each copy of such file or index in its possession.".

(3) by striking out "(e) (6), (7), (9), (10), and (11)" in subsection (j) and inserting in lieu thereof "(e) (6), (7), (9), (10), (11), and (12)";

(4) by striking out paragraph (1) of such subsection; and

(5) by striking out paragraph (3) of subsection (k) and redesignating the following paragraphs accordingly.

94TH CONGRESS
2D SESSION

H. R. 13192

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 1976

MS. ABZUG (for herself, MR. CONYERS, MR. HARRINGTON, MR. MAGUIRE, MR. MOFFETT, MR. CLAY, MR. DRINAN, MR. KOCH, MR. MITCHELL of Maryland, MR. HELSTOSKI, MR. RICHMOND, MR. ROYBAL, MR. ROSENTHAL, MR. SCHEUER, MR. STARK, and MR. CHARLES WILSON of Texas) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 552a of title 5, United States Code, is amended—

(1) by striking out subsection (d) (2) (B) (i) and inserting in lieu thereof the following:

"(i) correct, expunge, update, or supplement any portion thereof which the individual believes is not accurate, relevant, legally maintained, timely, or complete; or";

(2) by striking out "and" at the end of paragraph (10) of subsection (e), by striking out the period at

the end of paragraph (11) of such subsection and inserting in lieu thereof "; and", and by inserting immediately thereafter the following new paragraph:

"(12) inform each person who was—

"(A) the sender or receiver of any written communication, or communication by wire, cable, radio, or other means which was intercepted, recorded, or otherwise examined, by such agency, or any officer or employee thereof, without a search warrant, or without the consent of both the sender and receiver; or the occupant, resident, or owner of any premises or vehicle which was the subject of any search, physical intrusion, or other trespass, by such agency, or any officer or employee thereof, without a search warrant, or without the consent of such person;

"(B) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program known as CHAOS, which operation or program is described in the report, dated June 1975, to the President by the Commission on CIA Activities Within the United States;

"(C) the subject of a file or named in an index

created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program known as "Counter-intelligence Program" or "COINTELPRO", which operation or program is described in the Statement of Hon. William B. Saxbe, and the hearings of Subcommittee of the House Judiciary Committee on November 20, 1974;

"(D) the subject of a file or named in an index created, maintained, or disseminated by such agency, or any officer or employee thereof, in connection with an operation or program of the Internal Revenue Service known as "The Special Service Staff", which operation or program is described in the Joint Committee on Internal Revenue Taxation Committee Print entitled "Investigation of the Special Service Staff of the Internal Revenue Service" dated June 5, 1975;

that he, she, or it is or was such a person, provide each such person with a clear and concise statement of such person's rights under this section and section 552 of this title, and provide each such person with the option of requiring that agency to destroy each copy of such file or index in its possession.".

(3) by striking out "(e) (6), (7), (9), (10), and (11)" in subsection (j) and inserting in lieu thereof "(e) (6), (7), (9), (10), (11), and (12)";

(4) by striking out paragraph (1) of such subsection; and

(5) by striking out paragraph (3) of subsection (k) and redesignating the following paragraphs accordingly.

94TH CONGRESS
1ST SESSION

H. R. 169

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1975

Ms. ABZUG introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Privacy Act of 1974 (5 U.S.C. 552a) is amended:

(a) by striking out subsection (d) (2) (B) (i) and inserting in lieu thereof: "correct, expunge, update, or supplement any portion thereof which the individual believes is not accurate, relevant, legally maintained, timely, or complete; or";

(b) by striking all of subsection (j) (1); and

(c) by striking all of subsection (k) (3).

78-638 O - 77 - 2

Public Law 93-579
93rd Congress, S. 3418
December 31, 1974

An Act

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974". Privacy Act of 1974. 5 USC 552a note.

SEC. 2. (a) The Congress finds that— Congressional findings. 5 USC 552a note.

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to— Statement of purpose.

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

SEC. 3. Title 5, United States Code, is amended by adding after section 552 the following new section: 88 STAT. 1897

5 USC 552a.

"§ 552a. Records maintained on individuals

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

5 USC 552.

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by

13 USC 8.

section 8 of title 13; and

"(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) required under section 552 of this title;

"(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which

maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

"(11) pursuant to the order of a court of competent jurisdiction.

"(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

"(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence; Personal review.

"(2) permit the individual to request amendment of a record pertaining to him and— Amendment request.

"(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

"(B) promptly, either—

"(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason

for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

Review.

"(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

Notation of dispute.

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

"(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

"(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

Publication in Federal Register.

"(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(I) the categories of sources of records in the system;

"(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

"(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance; Rules of conduct.

"(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and Confidentiality of records.

"(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency. Publication in Federal Register.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall— 5 USC 553.

"(1) establish procedures whereby an individual can be notified

in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

Fees. "(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

Publication in Federal Register. The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

"(g)(1) CIVIL REMEDIES.—Whenever any agency

"(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

"(B) refuses to comply with an individual request under subsection (d)(1) of this section;

"(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

"(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

Jurisdiction. the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

Amendment of record. "(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

Injunction. "(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of

any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of— Damages.

"(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

"(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

"(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through 5 USC 553.

(F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

5 USC 553.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

5 USC 552.

"(1) subject to the provisions of section 552(b)(1) of this title;

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

18 USC 3056.

"(4) required by statute to be maintained and used solely as statistical records;

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the

Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553 (c) of this title, the reasons why the system of records is to be exempted from a provision of this section. 5 USC 553.

"(l)(1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section. 44 USC 3103.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register. Publication in Federal Register.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

"(m) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

"(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

"(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such Notice to Congress and OMB.

proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

Report to Speaker of the House and President of the Senate.

"(p) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

5 USC 552.

(q) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.".

5 USC prec. 500.

SEC. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings.".

Privacy Protection Study Commission. Establishment. 5 USC 552a note.

SEC. 5. (a)(1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

Membership.

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas—civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government—are well qualified for service on the Commission.

(2) The members of the Commission shall elect a Chairman from among themselves.

Vacancies.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5) (A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress. Budget requests.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. Legislative recommendations.

(b) The Commission shall—

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and Study.

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information. Ante, p. 1897.

(c) (1) In the course of conducting the study required under subsection (b) (1) of this section, and in its reports thereon, the Commission may research, examine, and analyze—

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) (A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of—

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

(ii) whether the Internal Revenue Service should be prohibited from transfering individually indentifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and

Ante, p. 1897.

(iv) whether and how the standards for security and confidentiality of records required under section 552a (c) (10) of such title should be applied when a record is disclosed to a person other than an agency.

Religious organizations, exception.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

Guidelines for study.

(3) In conducting such study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may—

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e) (1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpena shall be issued only upon an affirmative vote of a majority of all members of the Com-

mission. Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2)(A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a (o) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

Reports, transmittal to Commission. Ante, p. 1897.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually indentifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to——

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

5 USC 5101, 5331.

5 USC 5332 note.

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized—

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

Rules and regulations.

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

Compensation.

(f)(1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

Per diem.

5 USC 5332 note.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

Travel expenses.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

Report to President and Congress.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b)(1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

Penalties.

(h)(1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

5 USC 552a note.

SEC. 6. The Office of Management and Budget shall—

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

Ante, p. 1897.

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

5 USC 552a note.

SEC. 7. (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

88 STAT. 1910

SEC. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted. Effective date. 5 USC 552a note.

SEC. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of $1,500,000, except that not more than $750,000 may be expended during any such fiscal year. Appropriation. 5 USC 552a note.

Approved December 31, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1416 accompanying H.R. 16373 (Comm. on Government Operations).
SENATE REPORT No. 93-1183 (Comm. on Government Operations).
CONGRESSIONAL RECORD, Vol. 120 (1974):
Nov. 21, considered and passed Senate.
Dec. 11, considered and passed House, amended, in lieu of H.R. 16373.
Dec. 17, Senate concurred in House amendment with amendments.
Dec. 18, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 1:
Jan. 1, Presidential statement.

Ms. ABZUG. I am very pleased this morning to first call on George Bush, who is the Director of the Central Intelligence Agency, for his views on the subject matter of this hearing.

Mr. Bush, we are very pleased to have you here and to welcome you as the new Director of Central Intelligence. We wish you well in your new work and your new endeavor.

We would like you to take the oath before you commence your testimony.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

STATEMENT OF GEORGE BUSH, DIRECTOR, CENTRAL INTELLIGENCE AGENCY; ACCOMPANIED BY GEORGE L. CARY, LEGISLATIVE COUNSEL

Mr. BUSH. I do.

Ms. ABZUG. Will you tell us by whom you are accompanied, Mr. Bush?

Mr. BUSH. I am accompanied by Mr. George Cary, the Legislative Counsel of the Central Intelligence Agency.

Ms. ABZUG. Does he intend to make any statements?

Mr. BUSH. I will lean heavily on him because so much of this happened in the past that I would like very much to have it understood that he could be responsive to questions.

Ms. ABZUG. Thank you. Would you raise your hand.

Do you swear that the testimony that you are about to give will be the whole truth and nothing but the truth, so help you God?

Mr. CARY. I do.

Ms. ABZUG. Thank you very much.

Mr. STEIGER. Madam Chairwoman.

Ms. ABZUG. Mr. Steiger.

Mr. STEIGER. Before the Director proceeds, I would like to pose a parliamentary inquiry, if the Chair would permit.

Ms. ABZUG. By all means, Mr. Steiger.

Mr. STEIGER. I think we have a problem here, Madam Chairwoman. As I understand it, the chairperson is a leader in the organization known as the Women's Strike for Peace. This organization is in litigation now and the witness here is a defendant and the Chair is a plaintiff.

I would defer to my colleagues who are members of the bar, but if that is the case, it seems to me that we have an honest dilemma here and I wonder how we could best resolve it.

It is my understanding that the nature of the complaint deals with matters to be addressed by the chairlady now to the witness. If that is the case, I think we might have a problem.

Ms. ABZUG. That is a very interesting point you have made. If you would care for my response to that, I am not a plaintiff in that suit as far as I know. As a matter of fact, I am not familiar with the suit.

I had, at a time prior to my having become a Member of Congress, been actively involved with the organization called Women's Strike for Peace. I was very proud to have been the legislative and political ac-

tion director with an organization which I think played a very important role in helping to bring about the end of the war in Vietnam.

As far as I know, I am not a plaintif in that suit. I think it is a very fine organization, but I do not think it is at all relevant to this issue here today.

Mr. BROWN. Madam Chairwoman.

Ms. ABZUG. Mr. Brown.

Mr. BROWN. I serve on the Interstate and Foreign Commerce Committee and we make it a practice not to delve in hearings into areas which are before the courts for litigation. This is a simple matter of protecting the process of the law so that this Congress or subcommittee thereof will not in some way jeopardize the case with the questions and the publicity that flow from whatever actions we undertake.

So it would seem to me only appropriate that if there are matters in litigation, they should not be addressed by this committee.

I am not a member of the bar. As a matter of fact, I take some pride in this. But I do feel that if we are interested in the protection of rights—both the rights of the accused and the rights of the plaintiff—in any legal action we ought to be very careful to avoid any action in this committee that would jeopardize the full and complete exercise of those rights in a pending case.

I think this issue is raised very seriously and I think it ought to be addressed seriously. I think that prudence would be our best guide here and that we should simply stay out of asking questions and eliciting responses in those areas that are now in litigation.

I would assume that the Director and his counsel would observe that if we will not. I would certainly rely on them to tell us when, in their judgment, we are treading in that area.

Ms. ABZUG. Will the Director please proceed.

Mr. BUSH. Madam Chairwoman and members of the subcommittee, I am pleased to have this opportunity to state my views on H.R. 12039 and H.R. 169.

I will begin by discussing subsection 2 of H.R. 12039. This provision would require agencies to inform each person who was the subject of any warrantless or nonconsensual mail intercept, electronic surveillance, or surreptitious entry, or who was the subject of a file or named in an index in connection with the so-called Chaos, Cointelpro, or "special service staff" programs. Such notice would provide persons contacted with a statement of their rights to access under the Freedom of Information Act and Privacy Act and their right to request amendment of records under the Privacy Act. It would also provide them with the option of requiring destruction of records. The Privacy Act applies to citizens and permanent resident aliens, and it is presumed that H.R. 12039 is intended to have the same scope.

It is my understanding that the testimony of the Department of Justice will deal with the legal and practical problems which the proposed notification procedures would raise with respect to electronic surveillance, surreptitious entry, and the so-called Cointelpro operation. I would like to discuss H.R. 12039 in relation to the two Agency programs covered by the bill; namely, the so-called Chaos program and the mail intercept program.

Both of these programs are described in the Rockefeller Commission report on CIA activities within the United States. The Chaos

program was an effort to determine the extent of foreign influence on elements of the American antiwar and radical left movements. As conceived, this program was a proper foreign intelligence activity within the charter of the Agency. Contrary to its original purpose, however, the operation in practice resulted in some improper accumulation of material on legitimate domestic activities.

Most of this information was gleaned from overt sources and from other Government agencies, particularly the FBI. Only a very small fraction of reporting on the activities of American citizens in the United States was done by CIA. The program was terminated by order of Mr. Colby in early 1974. The mail intercept program, which began in the early 1950's, primarily involved the examination of mail sent to and received from the Soviet Union and other Communist countries.

In most cases, the envelopes were photographed but not opened. Mr. Colby terminated this program in 1973. The Chaos and mail intercept programs are distinguished from the other operations and activities mentioned in H.R. 12039 by the fact that they were strictly collection programs and did not involve any type of positive action against their subjects.

In my view, Madam Chairwoman, the notification procedures proposed in H.R. 12039 raise questions of practicality, necessity, and consistency with the spirit of the Privacy Act itself.

An Agency-initiated notification program of the individuals contemplated in H.R. 12039 would be unworkable. Because the Chaos program was not designed to identify individuals, but rather to examine the possibility of foreign connections with certain kinds of activity, most of the information collected or maintained under the program is not complete enough to sufficiently identify or locate the individuals concerned.

The program resulted in the accumulation of many names of individuals connected with such activities without further identifying information. Indeed, the Agency does not have identifying information on over 96 percent of the 200,000 names referenced in the program's indexes.

A name alone, even a full name, or a name coupled with a reference to an organization or another person, does not identify the subject with sufficient clarity to assure proper identification. Also, in many cases, names are incomplete or are not coupled even with past addresses. Moreover, the relatively few addresses the Agency does have are dated at least two, but more usually, 5 to 8 years old.

Therefore, even where the subject can be fully identified, there is a high statistical probability that he has changed his address in the intervening years. This identification problem exists to even greater degree in the case of mail interceptions. To identify the individuals involved with any degree of certainty would require this Agency to undertake a large-scale domestic inquiry. Such an effort would necessarily require collecting additional information on these individuals. This would of course defeat the purpose of this legislation and violate the recently issued Executive Order 11905.

These practical difficulties have serious privacy implications for the individuals concerned. An attempt to notify subjects based on information now available in Agency files would result in a great deal of

misdirected mail circulating through the postal system. And it is likely that many individuals could be incorrectly identified and thus be notified of the existence of information which was in fact related to another person.

Indeed, we have already confronted this problem even under existing procedures where we are able to solicit further identifying data from persons requesting information under the Privacy Act.

Madam Chairwoman, another question relates to the need to institute a notification program, with all its pitfalls, to inform individuals whether or not the Government maintains the specified records pertaining to them. The Privacy Act and the Freedom of Information Act already make adequate provision for individuals to ascertain the existence of such information. The Agency has stated on several occasions that any individual or organization seeking to determine whether the Agency holds information pertaining to them may contact the Agency, and such information, as is available pursuant to the Freedom of Information and Privacy Acts, will be released. Over 9,000 people have already done so, and this system is proving an adequate method for interested persons to exercise their rights under the acts. The volume of requests is a solid indication that the public is aware of the access specified by the acts.

An important and desirable aspect of existing procedures is that by responding to requests, the Agency is able to determine the current address of the individual requester, and in those cases where it is difficult to match existing information with a particular individual, the Agency has the opportunity to request the additional identifying information necessary to ascertain whether information the Agency has pertains in fact to such individual. This mitigates the dual problem of accurate identification and proper and discreet notification which are inherent in the procedures proposed in H.R. 12039.

Finally, the proposed legislation would require that the person notified be provided the option of requiring the Agency to destroy information improperly maintained or of requesting amendment and correction of the information. The Central Intelligence Agency has stated its intention to destroy such material, including all the information which was improperly collected or maintained under the so-called Chaos program, when the present moratorium is lifted.

Such destruction will, of course, be consistent with applicable law and Presidential directives. In addition, the Agency is in the process of reviewing all records systems to insure the information is properly held and that it is accurate, relevant, and timely. This Agency has requested the Privacy Commission to review Agency records systems to assure that they are consistent with the requirements of the Privacy Act. Accordingly, it would serve no purpose to encourage the updating, supplementing, or correcting of information which is bound for destruction.

In sum, Madam Chairwoman, it is my view that the notification procedures proposed in H.R. 12039 are impractical because it would be impossible to identify accurately a high proportion of the individuals involved. They are inconsistent with the spirit of the Privacy Act itself because it would be impossible to notify properly and discreetly many of the individuals whom we would be required to contact. And finally, the proposed notification procedures are simply

unnecessary because interested individuals can already be informed under existing law and can be assured that records pertaining to them which are being improperly maintained will be destroyed.

Both H.R. 12039 and H.R. 169 would amend the Privacy Act of 1974 by striking out the Central Intelligence Agency's partial exemption in section 3(j)(1). This section authorizes the Director of Central Intelligence to promulgate rules exempting any system of CIA records from certain requirements of the act. My predecessor, Bill Colby, appeared twice before this subcommittee to explain the need for at least a partial exemption of the Central Intelligence Agency from the Privacy Act in order to protect from public disclosure sensitive intelligence sources and methods.

As you know, the exemptions in this section were permissive. The Agency has determined that it will not avail itself of these exemptions except to exercise an exemption for access to information relating solely to intelligence sources and methods and to certain records relating to applicants and employees.

This narrow exemption for intelligence sources and methods is based on the fact that the Director of Central Intelligence is required by statute to protect intelligence sources and methods from unauthorized disclosure. I consider this narrow exemption absolutely essential to the successful conduct of our Nation's foreign intelligence program.

I assure the members of this committee, the Congress as a whole, and the American people that the Central Intelligence Agency is completely dedicated to the policy of the Privacy Act of 1974 that information on American citizens and permanent resident aliens be collected and used only for proper governmental purposes.

In conclusion, Madam Chairwoman, the Rockefeller Commission has recommended prompt destruction of records; the Privacy Act refers to the destruction of records; the Senate leadership encourages prompt destruction of records. And our view is that that should be accomplished in the very near future.

Thank you, Madam Chairwoman.

Ms. ABZUG. Thank you very much for your testimony. I have a question which I do not think was covered by your testimony. How, if there is a method at all, would you notify individuals whose files have been inappropriately and illegally collected that there is a file?

Mr. BUSH. Where there is some alleged damage, I believe that matter is being handled by the FBI. Where no damage is done, I think their privacy is best served by the destruction of the files—as the Rockefeller Commission report says should happen, as the leadership in the Senate has indicated should happen, and as the Privacy Act itself indicates should happen.

Ms. ABZUG. I am talking about files which the CIA has in its possession, not files which the FBI has in its possession.

You are aware of the fact that the FBI is reviewing the Cointelpro files, and that they have decided that an individual should be notified in those instances where action directed against him was improper and there is reason to believe that he was caused harm. Why is it that the CIA should not have a similar system of notification?

There is no question that there have been files where actions directed against individuals were improper and action against individuals caused actual harm.

Mr. BUSH. I think the difference is that where there has been that kind of action, the Justice Department is handling that kind of matter. Where there has not been action and where the collection was passive and nothing was done on it, the best way to do it is to destroy the files in accordance with the recommendations of the leadership of the Senate, in accordance with the recommendation of the Rockefeller Commission, and in accordance with the Privacy Act.

And second, Madam Chairwoman, because of the nature of the information that was gathered, the last thing I want to see happen is to have us go back into collecting a lot more information—even enough information to address an American citizen a letter. We are out of that business. We were in it wrongly. We are trying to look ahead.

One thing I am troubled about in this hearing is that I am compelled here to dwell on things that happened many years ago. And what we want to do is to get rid of files that were improperly collected and see that we do not ever get into that business again. That is why we have a difference of opinion in terms of this notification.

Ms. ABZUG. We have not had a difference of opinion yet, Mr. Bush. I would not anticipate it if I were you.

Mr. BUSH. It is anticipatory because I thought that perhaps you wanted notification. Maybe we have no difference; I hope we do not.

Ms. ABZUG. Mr. Director, I would like to ask you a question. Are you suggesting to me that all of CIA's files are presently in the possession of the FBI?

You just stated—and I want you to know what you just stated—that the FBI is taking care of notification. I want to be sure I did not hear this incorrectly.

I repeated to you that I was dealing with the question of your files—the files of the CIA. And you again repeated that the FBI is taking care of this notification.

Mr. BUSH. The Justice Department is handling the FBI cases. We have not got files where action was taken against individuals, to my knowledge. Therefore, we think that they should be destroyed. This is with the exception of the ones that are under investigation by the Justice Department. And that should be handled by the Justice Department.

Ms. ABZUG. Are you suggesting to me that the CIA did not maintain files improperly?

Mr. BUSH. No. I am maintaining that some collection was done which my predecessor said was wrong. We want to destroy those files. No damage has been alleged to the individuals involved and we think the way to serve these people is to have their files out of our hands and out of our storage.

Ms. ABZUG. Let me just put it to you very simply. You opened up people's mail in violation of not only the Constitution, but of criminal law. There were burglaries in violation of the Constitution and of criminal law. There was warrantless surveillance.

These are actions taken against individuals. There was the Chaos program, which was a CIA program. The Rockefeller report found that the names of all persons mentioned in intelligence source reports received by Operation Chaos were computer indexed. Approximately 300,000 names of American citizens and organizations were stored in the Chaos computer systems.

Chaos also maintained files on nearly 1,000 organizations, including such dangerous elements as the Clergy and Laymen Concerned About Vietnam, the National Committee to End the War in Vietnam, and, as we heard this morning, the Women Strike for Peace.

The Rockefeller report suggested that these files be destroyed. I understand. But this was not before, it would seem to me, the subjects of these files are made aware of the way in which the Government and its activities affected them. Now you will not address that question and I wonder why not.

You suggest that the orderly notification of an individual, where it is possible, is not proper. In view of the enormous harm that was done these individuals, in view of what has been the admitted invasion of both criminal law and the Constitution in the maintenance of these files, are we not going to be more effective in seeing to it that this does not happen again by showing the confidence to show citizens who were wrongly acted against that we can deal with it and we can notify them and we can make amends?

Is that not the way in which we can guarantee that the future will be changed—and not by an arbitrary action of destruction of files which you propose and which, by the way, disturbs me? I do not know what files you are proposing to destroy or for what reasons.

If, indeed, there are investigations going on and if, indeed, there are lawsuits, some of these files may have to me maintained for that purpose.

And is it again going to be the CIA policing itself and doing its own thing when there have been so many questions raised? I think that you might want to make sure the public would have this confidence. But how can you do that by arbitrarily saying you will destroy the files and by arbitrarily saying you do not think the people who have been harmed should be notified?

Mr. BUSH. We are not arbitrarily saying we will destroy files. The Rockefeller Commission has recommended it; the Senate of the United States through its leadership recognized that we will destroy them after the hearings are over; the Privacy Act talked about the destruction of files. And we want to be out of this business, not in it. So we are trying to protect people's privacy by not keeping files on American citizens which were collected in these programs.

And I refuse to have you say we are arbitrarily acting in this regard, Madam Chairwoman. That is not fair; and, it is not correct. The CIA is not acting unilaterally or arbitrarily. We are trying to comply with what we believe is the proper instruction from the Rockefeller Commission, from the act, and from, I think, the mood of the Congress to get rid of files that are improperly taken in the first place on American citizens.

Ms. ABZUG. There seems to be some record—which disturbs me—that files on at least three CIA activities were apparently destroyed in 1973.

Mr. BUSH. I was not there in 1973.

Ms. ABZUG. I know you were not there, but let me finish. These include the records of the drug testing program, which was a very serious program—and these are from the Rockefeller report—a list of 300,000 people arrested for morals offenses, and a list of foreign telephone call information.

Now I just want to suggest to you that if this is the history, we do have a problem. And I am suggesting that if there is going to be an orderly way of destroying files, that first and foremost those files that were collected illegally and in violation of the Constitution and in violation of criminal law, containing information which should not have been collected by this Government, should at least be made available to the individuals about whom this information was collected.

I say this for any number of reasons—not the least of which is that the CIA, as is also a matter of record, has given information from these files to other agencies of Government. And even should you destroy this information so that you no longer maintain illegal information, some other agency has that information about that individual—information which very often was improperly collected and very often falsely collected. And that individual may still be the victim of violations of the Constitution and of the criminal law.

And I think that the CIA, if it wants to clean house, has the responsibility to deal first and foremost with its own activities that are essential for foreign intelligence. But second, it seems to me, the issue of the maintenance of illegal activities, illegal files, illegal information, which they may have disseminated to other agencies as well, requires an immediate obligation to notify the persons involved as to what is the situation so that something can be done about it.

Mr. Steiger, do you have questions?

Mr. STEIGER. Thank you, Madam Chairwoman.

Mr. Director, I am impressed with your statement. I wish you, or perhaps counsel, or perhaps one of the technical people you brought with you could expand a little on what seems to me the most persuasive part of all of your statement. And that is that in order to comply with the gentlelady's intent, you are going to have to stay in the domestic surveillance business for a long, long time.

As I understand this, what the committee is suggesting through the chairlady is that the CIA will find out every name that came up in these now identifiably improper procedures. And those will have to be notified that their names have come up, regardless of the extent of involvement of identification. This means the screening of other people of similar names and, it seems to me, a tremendous amount of activity of a domestic nature to simply identify them, locate them, and see what role they have played. This would mean, in effect, opening up an investigation on each of these people and thereby a compounding of the concern for their privacy.

Mr. BUSH. That, Congressman Steiger, is supposed to be part of the main thrust of our testimony. If we were encouraged to undertake such a notification program, it would get us into the domestic collection of information for addresses, to see whether this person is the same S. Jones who was shown, and so forth. And it would require a great deal of domestic inquiry.

And where there have been possible violations of law, it is my understanding that the Justice Department is looking into that. These matters, as Congressman Brown mentioned, should not be the matter for considerable disclosure and debate here, but it is going on where there have been suggestions of damage. These matters have been handed to the Justice Department.

But where these files are passive and there has been no allegation of damage, our view is simply that we should comply, again, not arbitrarily, with the spirit of the Rockefeller Commission report and with what we understand to be a mandate from the leadership of the Senate to destroy these files promptly.

Mr. STEIGER. I have another ancillary concern. The gentlelady has made it clear that she feels that everybody whose name appears in this file has been harmed. You would then notify them: "Dear Mr. Schmuckmaker, under the terms of the Privacy Act, we are required to notify you that we have improperly gathered your name and therefore we are notifying you of the damage we have done you."

Obviously, that is going to initiate litigations to the point where there are not enough unemployed attorneys that you could hire on a contract basis to service that kind of activity.

I do not think it is illusionary either because you read in your testimony that you have 9,000 inquiries before the CIA. Is that correct?

Mr. CARY. That is correct.

Mr. STEIGER. And this is under the existing procedures. In other words, there were 9,000 people who wanted to know if they were involved.

Mr. CARY. That is right.

Mr. STEIGER. And they have inquired and you are processing those now?

Mr. CARY. That is right.

Mr. STEIGER. What volume are we talking about? Are we talking about hundreds of thousands of people who might possibly have to be notified? In the mail surveillance alone, are we not talking about a 20-year program?

Mr. CARY. There is a tremendous volume in the mail program, Mr. Steiger. Perhaps it would have helped if the Justice Department had testified first, as we had thought that they would, to make the distinction between the action which we understand the Department of Justice will undertake in connection wtih the Cointelpro program and notify people who may have been harmed as a result of that program.

Our programs were essentially, especially the Chaos program, a collection of materials. That information was disseminated to other agencies in certain instances. We have records of the agencies to whom that information was sent. But no harm was done to individuals in that program.

We do not intend to notify those people unless we are required to do so by law. We do feel there is an adequate remedy in the Freedom of Information Act and the Privacy Act, which is witnessed by the fact that we have gotten this large volume of inquiries that we have processed.

I think the question of whether people should be notified is a question that is difficult for any of us to decide because a number of people who have written to us on whom we have had files or some information have asked that that information be destroyed. Now we are precluded from doing that under the current moritorium. But I think that most of the people who have expressed an opinion want the information destroyed.

Ms. ABZUG. Will the gentleman yield?

Mr. STEIGER. Surely.

Ms. ABZUG. You have just indicated that a number of people have written to you asking that the information be destroyed. Would it be possible for you to indicate for the record here how many such people have written to you—without names?

Mr. CARY. I do not have the numbers, Madam Chairwoman.

Ms. ABZUG. Would you be good enough to supply that for the record?

Mr. CARY. I will endeavor to get that.

[The material follows:]

As far as can be determined, records maintained for requests under the Privacy Act reveal five requesters have asked that the information concerning them be destroyed. Two of these requests concern information which has been designated for destruction. This material has been set aside and will be reviewed for destruction when the moratorium on destruction is lifted.

Ms. ABZUG. And would you indicate what in fact you have done with respect to those requests? Also, what portion of those files were a part of the Chaos operation or any other operation that has been referred to as being in violation of the charter of the CIA?

Mr. STEIGER. I only have one more question, Madam Chairwoman.

Mr. Director, how long have you been Director of the Agency now?

Mr. BUSH. Almost 3 months.

Mr. STEIGER. How many appearances have you made before this body and the Senate?

Mr. BUSH. I think this is my 18th appearance.

Mr. STEIGER. So in 90 days of service, you have been up here 18 times?

Mr. BUSH. It is either 17 or 18, sir.

Mr. STEIGER. Are you scheduled for many more?

Mr. BUSH. I vowed to be as responsive as possible to congressional inquiry. I have a feeling there will be quite a few more; yes, sir.

Mr. STEIGER. Mr. Director, this is none of my business actually, but I would urge that you in the future consider very carefully not only your obligation to this body, but your obligation to the Agency and to the people. I think the people, and I know a great many Members of this body, would be very sympathetic if, in your view, future appearances would be duplicative of previous appearances, that you be allowed to conduct your office and not have to appear up here on a constant basis. I urge you to consider that at your next request for appearance.

Thank you, Madam Chairwoman.

Ms. ABZUG. Thank you, Mr. Steiger. Mr. Conyers.

Mr. CONYERS. Thank you, Madam Chairwoman.

Mr. Bush, I would like to congratulate you on your appointment to the directorship. I have not seen you since you assumed that office. It is particularly a very heavy responsibility in light of recent revelations.

And I think this hearing is very important in determining where our new Director is going to end up in the consideration of making fair the processes of the Central Intelligence Agency.

To me, this is a very critical matter. I respect the right of my colleagues to make light of this subject matter. I suppose having 435

different individuals, we approach these matters with varying degrees of gravity depending on our perception of their importance.

I take it that we have demonstrated recently, through the Intelligence Department operations not limited to the CIA, that we are not operating in a democratic society and that there are attempts on your part and on ours to make this transition a more truthful objective now and in the future. Now that is the point of these hearings.

The question turns around one that is quite simple—whether we should destroy the materials which were illegally and improperly collected or whether we should afford those individuals who were the objects of these illegal activities the right to be advised of the fact that they were such targets.

As a matter of fact, I am quite sympathetic with you. I suppose that if I were the head of the CIA, I might not be as inclined to support the Abzug legislation. So to put this in real perspective, I would have been quite astounded had you come forward eagerly to make known the 7,000 or 8,000 or 9,000 names of people and organizations who have been the targets of illegal activities—especially when it did not occur under your directorship.

Now the point of the matter is that we are operating under the assumption, as has been stated by both you and Mr. Cary, that no harm has been done these individuals. It seems to me that statement is questionable on its surface.

There is no way that I, a member of this committee, can determine whether any harm has been done. First of all, I do not know who the people are. Many of the people may have been very grievously harmed and have no way of knowing it.

Since you are willing to cooperate with everybody who sends forward a request for information—I assume that is the case—then that puts the burden on 220 million Americans to write the CIA to ask if they were the object of an illegal activity during the counterintelligence program or the Chaos operation.

It would seem to me to be far more efficient and effective to reveal the names of those several thousands of people and make that information available to them rather than to put the burden on the entire American citizenry to determine whether they have been injured by the Central Intelligence Agency in the past.

Your response, please.

Mr. BUSH. First, Representative Conyers, I would not be here if I did not share the view of all the members of this committee that you are engaged in serious work. I do want to emphasize that.

But we do have a difference of opinion. I am troubled by the thing you put your finger on. But, believe me, the procedures for the kind of notification you are talking about involves collecting information on individuals. If you have a guy by the name of J. Jones who was in some activity, in order to run that down, the CIA is going to be right back in the very kind of business that I am determined as Director to see that it is not in. And certainly you, I suspect from knowing your record on civil liberties, would not condone this. So I simply ask you to accept that we do have an honest difference on the thrust.

In terms of the disposal of information, I think that if a person felt that he had been damaged, he would know it now and he could come

forward and request the information, probably. I am not going to say certainly, because you raise a very valid argument.

Absent that, I think his interests of privacy are best served by following the recommendations of the Rockefeller Commission and by following what I understand to be the mood of the Senate and by following the Privacy Act.

I am not here saying that the argument you raise is without merit. I have been advised that where there is a possible violation of the law, Justice is indeed looking into it. And this should be further protection to the individual. But please accept that we are both concerned about it.

Mr. CONYERS. Do you have a response, Mr. Cary, that you would care to add?

Mr. CARY. I would add nothing additional except that two select committees have looked into these programs in, I think, considerable detail. So I think they have been looked into by the Congress.

Ms. ABZUG. Would the gentleman yield on that point?

Mr. CONYERS. Of course.

Ms. ABZUG. I just want to make clear that we are an ongoing committee which has oversight and legislative responsibility under the Freedom of Information and the Privacy Acts. And what we have responsibility to find out as a result of these hearings is whether these acts are being complied with or whether, in view of information that has come out not only in the hearings of both of these committees but in hearings before this committee and other committees, we are properly seeing the implementation of the Privacy Act and the Freedom of Information Act and in what ways, if any, the acts require amendment.

So it is important to realize that we will continue to do our work even though two special committees have done a very fine job and have made their reports and have concluded their work. We are a standing committee and we will continue to do our work, as is our responsibility. I trust you do understand that.

Mr. CONYERS. One of our distinguished nonlawyers on this subcommittee has indicated that this legislation would create a great amount of litigation and would employ every unemployed attorney in the country. Let us discuss that for just a moment.

First of all, it is obvious, of course, that a person bringing a suit would have no right to any award unless he could establish damages in the case. Assuming that he even won the case, he would have to show injury. So obviously this would be no great operation involving several thousands of people.

As a matter of fact, it is quite possible that there may be more lawsuits brought by people demanding to see their files, not knowing what is in them, than there would be if we just notified the 7,000 or 8,000 people—many of whom already know who they are and many of whom, in fact, are already litigating the very questions that we are acting on, which are so difficult, and not waiting for this subcommittee nor for the new Director of the Central Intelligence Agency to act.

So I do not think we ought to create some imagery of a fantastic explosion of legal cases. Many of those several thousands of people, I think you would agree, Mr. Director, would, if they were advised of what was in their files, determine in fact that they had not been

harmed and that there was in fact no basis for a suit. Would that not be the case?

Mr. BUSH. I would expect that maybe it would, sir.

Mr. CONYERS. So that would diminish the number of 7,500 by that amount and it would also subtract the number of people who are already aware of their injuries and are already in litigation. So it would seem to me that in the interest of efficiency, the route suggested in the legislation proposed by our subcommittee chairwoman is extremely expeditious.

I do not understand why the Central Intelligence Agency would go into more domestic spying when all we are calling upon them to do is to reveal the addresses with the names of the people they have. Now I suppose somebody is going to tell me that they have been collecting names and no addresses. But that degree of inefficiency, I refuse to accept even from the Central Intelligence Agency.

Mr. BUSH. Mr. Conyers, I have found that we are given credit for some things which we do not deserve. We do not have that degree of efficiency. In some instances it is only a name and no address. So it would require, I am convinced, additional investigative work which we do not want to become involved in.

The second thing is that I am not clear as to how you mean the use of "reveal." Are you suggesting that the names be published—a revelation? Do you mean it in that sense? I would think that a person's privacy could well be abused by revealing his name in that sense.

Mr. CONYERS. I am glad you raised that question. If you are confused about it—as a fellow civil libertarian which I think you are—that is precisely what I did not mean. I am glad that point was made.

What we mean is notifying the individual or the organization directly and confidentially, of course.

At any rate, I am going to yield back any time that I may have, Madam Chairwoman. I think the issue is very clearly formed. There is a difference of view.

Your position on this matter is not unexpected and I would urge that it not be held against you in any way. But I am hopeful, Mr. Director, that you sense as deeply as do I the great burden that is now imposed upon our intelligence agencies after the revelations that have recently come out from the two congressional committees and a Presidentially appointed committee.

Mr. BUSH. I can assure you, sir, that I do. And we do want to conduct ourselves compatibly with the Constitution. I believe we can and I think we are doing it.

To the credit of my predecessor. I think that the abuses had indeed been corrected. But I am sensitive to this and I respect this difference of opinion. I just feel strongly that the sooner we get our business in order so that we are not keeping records that we should not be keeping on Americans, the better off we are.

Mr. CONYERS. Thank you.

Ms. ABZUG. Mr. McCloskey.

Mr. MCCLOSKEY. Madam Chairwoman, if I understand the state of the record, this committee could do precisely what we are asking the Director of the CIA to consider doing. We could ask for a list of the names and addresses collected in these files and we could mail out,

under the frank, from this committee to each of the individuals who is named and has an address, a statement of his rights under the Privacy Act.

I think it is unwise to try to burden the Director of the CIA with this. If we feel this is what should be done, we ought to vote on it and do it. But I am not compelled at this point to know which way to go on this one. It seems to me that the Director raises a good point. But certainly this committee could do everything that we are asking them to do.

I would like to go into the second program. The Chaos program, Mr. Bush, as I understand it, took no active action other than the collection of information and the funneling of names to other agencies. So the CIA was in an intelligence function here, but with no direct action.

Mr. BUSH. Yes.

Mr. MCCLOSKEY. On the mail opening, your testimony indicates that the mail was opened primarily to people to and from the Soviet Union or other Communist countries. I take it that that information is also on a printout and that those names could be furnished this committee if the printout were requested. Is that correct?

Mr. BUSH. Subject, sir, to the privacy issue, I am sure that they could.

Mr. MCCLOSKEY. The privacy issue would exclude any requests made by this committee. The Privacy Act does not entitle the executive branch to retain from congressional inquiry any such list of names, as I understand it.

I would like to ask a question about the Justice Department. We have had real questions about the legality of the intercepts of telegrams to and from foreign nations. There appears to be confusion in the Communication Acts as to whether the Justice Department and the Security Agency were acting legally when they intercepted telegrams.

But the opening of mail, which was pursued by the CIA for over 20 years, was clearly illegal, in my understanding. Is there any contention by the CIA that the opening of mail was legitimate and was not a violation of the criminal law?

Mr. BUSH. I think it is in litigation now, Mr. McCloskey.

Mr. MCCLOSKEY. What is the CIA's legal position? What does General Counsel state was the right of the CIA to open mail?

Mr. CARY. By hindsight, Mr. McCloskey, this was a questionable program.

Mr. MCCLOSKEY. Was it a criminal program? Was the man who ordered the opening of the mail directing the commission of a felony?

Mr. BUSH. That is the matter that I believe is being litigated right now.

There is a Justice Department witness to follow, and I would appreciate that question's being deferred.

Mr. MCCLOSKEY. I will defer the question then to the Justice Department.

It has puzzled me, frankly, as to why the Justice Department has not prosecuted someone if it were indeed a criminal act, or why they have not stated unequivocally that it was not a criminal act in making the

choice not to prosecute. But I will direct that to the Justice Department.

Thank you.

Ms. ABZUG. Thank you, Mr. McCloskey.

I think that the Rockefeller Commission report, if I recall it correctly, in dealing with the question of the mail openings indicates that while in operation, the CIA's domestic mail opening programs were unlawful. U.S. statutes specifically forbid the opening of the mail.

I do not think there is a question about it; I just wanted to state that for the record.

Mr. Harrington, do you have questions?

Mr. HARRINGTON. Mr. Bush, I find it puzzling that someone with your background and that someone with an appreciation for the country's experience over the last 15 years should not reflect somewhat more before responding to the committee on the question of adequacy of response to individuals who have been the subject of these programs and on the level of cynicism that the public has directed toward all institutions of government. I suspect, if any recent assessments are correct, that the Executive is about at the level now where the Congress finds itself.

In that context, both your own background and to a degree the perceptible erosion of confidence in our institutions that I think is demonstratable in so many ways, I wonder whether you think that the response you have given this morning, referring as you have to the Rockefeller Commission and to the Senate Committee on Intelligence and to their direction to you to dispose of these files, is adequate.

In the context of the widespread cynicism that I have alluded to and in the context of Executive orders—which for the most part have been the Executive response to the need for intelligence reform—is this in fact an adequate response to that malaise of attitude, that cynicism that is existent, and will it in fact do what you profess to want to do? Namely, will it regenerate, to a degree, confidence in a process as being workable and believable?

In listening to you, I find it very difficult to accept your response—given the experience we have shared in dealing with governmental problems over the last generation.

Mr. BUSH. I am concerned about the cynicism in this country. I was surprised, frankly, in coming back from China to find the level of cynicism. You have mentioned the Congress and you have mentioned the executive branch. Clearly, I am vitally concerned with the cynicism that is abroad regarding the Central Intelligence Agency.

I find it a much stronger, viable asset than I thought I would find it. And the only fundamental place where we differ on this testimony, I think, is that you are concerned about damage that may have been done to somebody who does not know he has been damaged or he probably would have come forward, and I am concerned, as I assume you are, about the retention of information on individuals who should not have had that information gathered on them in the first place.

So all I ask is that you at least give me some credit for being concerned. I am vitally concerned. This institution must have the support of the people and, thus, the Congress if we are going to continue to perform our mission which I think is vitally important.

I see your point. I only ask that you see ours in terms of what one does to lower the level of cynicism. How about the Americans who have files on them that should not be kept? It seems to me that the way you take care of the problem promptly and take care of it most effectively is to say, "OK, there are no more files kept illegally."

I took exception—I hope not overly strenuously—to the chairwoman's comment on arbitrarily destroying files. That is not our intent at all. We think we are complying with the mood of this country and the mood of this body and certainly the spirit of the recommendations of the Rockefeller Commission.

Mr. HARRINGTON. Let me rejoin and then I have a number of specific questions. We see a very interesting reticence on the part of the Government in cooperating with foreign governments in the so-called Lockheed loan scandal that affects both West-European democracies and Asiatic democracies which have been shaped to our image and likeness as a result of World War II.

We see the continual and almost daily unraveling of the only substantive piece of legislation to be produced by the Senate select committee. We see people appointed to the Rockefeller Commission whose collective view of the world is one that I suspect enhances and reinforces a prior commitment to that view.

We see your suggestion today in the light of all this and in the light of the deliberate discreditation of the House investigation, which, I suspect, has not been at all internally inspired. I find it very difficult to accept the notion that your response brings us to the broader areas of concern, dealing with not only the individual who is affected, but also with the broad perception of a government willing to look harshly at itself and look with some degree of objectivity at itself.

Let me give you an example. I gather, from looking at the kind of information that has been reported to date, that there has been an exchange of information in a number of areas affecting the individuals who were the subjects of these activities. Has one of the areas been Civil Service Commission activities in terms of examining prospective job applicants, or local police departments or law enforcement agencies over the country as a whole during the course of the last generation?

Mr. BUSH. I would like our counsel to respond to that.

Mr. CARY. No, sir.

Mr. HARRINGTON. There has never been any exchange of information of any kind dealing with information gathered about individuals or organizations in a way that would show up on areas where prospective employment may be at stake or where there would be checks made by local law enforcement agencies about the activities of people for other purposes?

Mr. CARY. No, sir.

Ms. ABZUG. Would the gentleman yield?

Mr. HARRINGTON. Go ahead.

Ms. ABZUG. I want to be sure I understand that testimony. Is it your testimony that the CIA gave no information that it collected in this program for purposes of employment and other matters of that kind? Is that your testimony?

Mr. CARY. With respect to the Chaos program.

Mr. HARRINGTON. No; I am speaking in general. I did not narrow the question to a specific program. I am speaking in general of pro-

grams that would be related to or symbolized by the Chaos program—programs of the kind that would deal with suspected activity of the kind characterized by the directive. I am speaking of domestic or foreign inspired activity of the kind that characterized the programs of the 1960's and early 1970's.

Mr. CARY. I think some of that information was passed on to the FBI. I am not aware that any information was passed on to the Civil Service Commission, nor am I aware of any instances where this information was made available to prospective employers on a reference question. This is, I gather, what you had in mind.

Mr. HARRINGTON. Yes. Can either of you say with certainty whether or not the 300,000 names, which have been described as being in various stages of disarray and to a degree unable to be accurately referred back to in many instances, have been in any fashion integrated into your Deputy Director's master computer systems so that they can, despite the fact the files may be destroyed, be recalled?

Mr. CARY. My understanding, Mr. Harrington, is that this information has been separated and kept in separate files and other systems.

Mr. HARRINGTON. What do you mean by "separated?"

Mr. CARY. It has not been integrated into other Agency filing systems. The files are separate; however, certain of the names in the Chaos index are also included in the central index.

Mr. HARRINGTON. Will it exist if the Director is taken at his word and there is a destruction after the mortorium ends? Will it exist in any fashion on computer lists, separate or not, so that it could be reconstituted?

Mr. CARY. It will not exist. The information improperly collected during the Chaos program will be destroyed together with all index references in such information.

Mr. HARRINGTON. There will be no record at all in any fashion or in any form that will allow your Agency in any one of the programs—not limiting it to Chaos—to allow there to be a retrieval or reconstruction of the information gathered on these people?

Mr. CARY. I am here under oath and I want to be sure we have no misundertandings. There is some information which we keep on American citizens which is entirely proper information, and which starts from employment investigations, and information with respect to contractors with the Agency, and things of that sort.

Aside from those areas which have been described in law and regulation as proper for the Agency, we fully intend to expunge these records completely.

Mr. HARRINGTON. Would that include efforts made interdepartmentally to expunge that material to the degree that it has been passed on or shared with other executive branch agencies?

Mr. CARY. Yes, sir. My information is, from the people who are more intimately acquainted with the details of these files, that we do have records of other agencies to whom the information was provided. We intend to assure that that information is destroyed in the other agencies as well.

Mr. HARRINGTON. Do these 300,000 names that I referred to in my initial question and that are the subject of the Director's comments earlier this morning presently exist in that DDO master computer list?

Mr. CARY. It is a separate list. However certain of the names on this list are included in the central index.

Mr. HARRINGTON. But they do exist in some fashion?

Mr. CARY. Yes, sir.

Mr. HARRINGTON. Have they been computerized?

Mr. CARY. If we are talking about the Chaos list; yes, sir.

Mr. HARRINGTON. And those are the ones which you have told us this morning that you intend to expunge from that method of keeping records?

Mr. CARY. Yes, sir. I would hasten to add, those that are improper as opposed to those that we might properly retain in the areas that I have mentioned.

Mr. HARRINGTON. What about information derived as a result of this or similar programs that deals with relevant or substantive national security information, as you view it? Will that information also, if it is based or premised on illegal or questionable activity, be no longer a part of the records you maintain?

Mr. CARY. All I can say in answer to that, Mr. Harrington, is that we intend to get rid of all improper information in our files. It is difficult to make a categorical statement on that.

Mr. HARRINGTON. I would like to go back to one other area. Has any of the information of this kind been given to any State or local law enforcement agencies? We talked about your exchange at the executive branch level. Has any of this information, proper or not, and its origins questionable or not, been exchanged with local law enforcement officials?

Mr. CARY. Not by us.

Mr. HARRINGTON. Not by the CIA?

Mr. CARY. No.

Mr. HARRINGTON. Do you know whether or not it has been made available indirectly by the FBI to these agencies?

Mr. CARY. I cannot answer that question; I am not sure.

Ms. ABZUG. Mr. Brown.

Mr. BROWN. Thank you, Madam Chairwoman.

Mr. Director, some years ago there was a movie director or choreographer or whatever by the name of Busby Berkeley, as I recall. I have asked some of my colleagues and they are culturally inadequate and noboby can advise me as to who that is. But he used to be in charge of productions where there was a mirror image used frequently to indicate that there was a cast of thousands when in fact they were starting with a half a dozen pretty girls. But the mirror image went on and on and on into the distance.

I am a little bit concerned about the mirror image that we are going to get out of this question of notifying everybody who is involved in current records of the fact that they are in those records.

First, I assume it would be necessary to make a list of everybody who is on the list that has been developed out of previous surveillance techniques that have been found to be illegal and undesirable and faulty in some way. And you have indicated that you do not know for sure where and who all of those people are.

In real life, as opposed to the Congress, I am in the newspaper business. We learn in that business that 10 percent of the people change their addresses every year. So on the average, in 10 years you have a

total address change for everybody. That does not work out, of course, because some people never relocate, but a lot of people relocate more than once every 10 years.

Therefore, I assume the problem would be that you would have to go to friends or neighbors or somebody to find out what happened to John Jones who got mail from some Communist country at a certain address. And in doing that, you would develop the name of a friend or a neighbor who told about John Jones and where he has gone and what has happened to him. Then that person's name winds up again in the list because he was asked about John Jones in connection with finding his address. Is that correct?

Mr. BUSH. Yes, sir; it is correct.

Mr. BROWN. And so you would have to notify the neighbor that he is involved in this thing too; wouldn't you?

Mr. BUSH. I hope they would not disclose that kind of information, but it would certainly encourage the Agency to be involved in collecting information on the right or perhaps the wrong American citizen. And I think the committee should give some weight to that very legitimate concern that we have.

Ms. ABZUG. Would the gentleman yield?

Mr. BROWN. Not quite at this moment, Madam Chairwoman, because I want to develop a premise here and then I will be more than happy to yield. I have been patient in waiting for other questions and I would like the opportunity to go ahead with mine.

Ms. ABZUG. Surely.

Mr. BROWN. The neighborhood in which I live happens to have a Presidential candidate—a Senator from Idaho. We have a Secret Service in the neighborhood now, so we are not likely to get heisted now for at least the next few months. But when we go out and walk with the dog at night, I would assume that somewhere along the line my name has wound up on a list that says that there is a strange Congressman in this neighborhood who walks his dog at about midnight.

I assume that it is in there innocently enough. I like Frank. I do not wish him any success in his ambition to be President, but I do not wish him any bodily harm. But I assume that my name is in that kind of surveillance and that it may have appeared innocently if there was a mail cover on somebody who got mail from abroad and then who wrote me in opposition to the war in Vietnam or about a social security problem or whatever. So my name is possibly on one of those lists.

Now if you are going to publish a list of people who were suspected of being Communist sympathizers or who were suspected of being interested in the violent overthrow of the Government—I want to overthrow the leadership of the Congress, but not violently—my name is likely to show up in that list. Is that right?

Mr. CARY. It could.

Mr. BROWN. And if you are going to publish that, I, as somebody who has been developed as a name on your list through these illegal procedures, want to know if I have some right of recovery. I want to be sure what my rights are here if I am put on a list to be notified. And then I want to know what happens to that list. Do you understand?

I am speaking in terms of the legislation we have before us. Is there any provision in the law for what happens to the list made of the original list?

Mr. BUSH. No, sir; not to my knowledge.

Mr. BROWN. So we get that endless mirror image. Some committee is going to have to come back in about 5 years and say, "What did you do with the list of those people listed on the illegal surveillance techniques?" Is that right?

Mr. BUSH. That is possible, sir.

Mr. BROWN. Let me go into one other area. As I understand it, the Secret Service is now exempt from providing information under the Privacy Act with reference to the work it does. Is that correct?

Mr. CARY. That is my understanding.

Mr. BROWN. I think the provision is listed in H.R. 12039 as subparagraph 3, subsection k of the Privacy Act. Is that correct?

Mr. CARY. That is correct.

Mr. BROWN. And under H.R. 12039, that exemption would be taken away. So if the Secret Service had a list of mental cases who had suggested it would be nice to kill all of the candidates for President of the United States so the country could be saved from the possibility that they might become President, and if they came to me as an employer or as a neighbor or as a relative and said, "Do you know where this guy is?" and I gave that information, then the subject of that investigation could write in to the Secret Service and say, "Please give me a list of all of those people who ratted on me so that when I get the Presidential candidates I can also get them." Is that right?

Mr. BUSH. I am not sure, sir.

Mr. CARY. We are not experts on the Secret Service aspect, but I would think that theoretically that could happen; yes. But I would defer to our friends from the Justice Department on that.

Mr. BROWN. I have a markup hearing and I am not going to be here for the Justice Department's testimony so I had to ask the question of you.

Mr. CARY. I think that could happen; yes, sir.

Mr. BROWN. It is the case, if I read the legislation correctly. I am not a lawyer, so I sometimes do not read it right. But there is an exemption for the Secret Service in the present Privacy Act that says that they cannot give to your average Presidential assassinator a list of those people who have ratted on them. However, that exemption will be taken away under this legislation.

I would be glad to yield to you now, Madam Chairwoman.

Ms. ABZUG. Have you concluded?

Mr. BROWN. No; I yield to you.

Ms. ABZUG. At that point when you were expanding the notice provisions of this bill, I just wanted to point out to you that we only provide for direct notice to the individual about whom there is a file collected illegally. And that does not require notice to the community.

If you were a lawyer, you would know that there are methods to provide for notice by mail. And should that notice not get there, if there is a certification of notice having been sent, that is duly accepted under the law.

Mr. BROWN. I think the chairwoman missed my point. The point was that I might be in that list relatively innocently because I am walking my dog at midnight or because I am getting mail from somebody who is under surveillance. But if some notice were sent to me, that notice might very well become public information of some nature and thereby

my reputation be damaged as a relatively innocent citizen. That is what bothers me. I would be glad to yield now, Madam Chairwoman.

Ms. ABZUG. I was indicating to you that the only one who would be releasing that information would be you. This is a notification directed to the individual. I can appreciate the gentleman's being concerned that he might find his name collected on the list improperly. That happens to be one of the points of what has happened in the past but should not continue in the future. But you would be the only one to make it public.

Mr. BROWN. Madam Chairwoman, while I am not a lawyer, the chairlady does not live in a small town.

Ms. ABZUG. I live in a village—called Greenwich Village.

Mr. BROWN. Yes; and that is not exactly a small town. That is where I got my wife.

The fact of the matter is that in a small town, when you receive notice from the CIA, in a plain, brown envelope, the guy who delivers that letter to your house probably has a fair idea of what is in it. Everybody else on the route probably has a fair idea of what you got in the way of mail. So I am not so sure that that kind of notification is exactly within the realm of the Privacy Act nor that, in fact, it can be legislated against.

I would be glad to yield further, Madam Chairwoman.

Ms. ABZUG. I really think the gentleman should have an opportunity to complete his questions of the Director.

I must say that listening to you is very difficult. We could save some money if we don't want to deliver mail to your town in general.

Mr. BROWN. That suggestion has been made by the post office in my area, although not in my hometown, but in some of the other villages in my community. And frankly, considering what it costs, it might not be a bad idea.

Do you have any idea, Mr. Director, of what either the cost or the time involved would be in tracking down those names and addresses and individuals who are listed in these files—whether they were innocently involved or whether they were under some kind of surveillance or suspicion? And could you give me some idea of what the relationship might be of those people who would be listed, but who might not in terms of their personal involvement have been under surveillance by the CIA?

Mr. BUSH. I think there has been an estimate done, sir, on the time consumed. The figure that I have been provided with at just this moment is 480,000 man-hours.

I would prefer that counsel respond to the second part of that question.

Mr. CARY. Would you repeat that, sir?

Mr. BROWN. How many people would be involved who were not themselves under surveillance, but who would be involved in some collateral way? For example, I might be involved by walking my dog around the Secret Service agent's camper near Frank Church's house. How many people who would be just casually related to the situation would be involved? Do you have any idea?

Mr. CARY. We have no estimate on that, sir.

Mr. BUSH. There would be a lot. Our testimony would indicate that there would be quite a few. I have just asked, sir, and we do

no have an estimate of the number of people. We have not really gone into it in this much detail.

Mr. BROWN. Presumably, under this legislation, all of those people would have to be involved too because the legislation, as I recall, would involve the owners of cars who were put under surveillance by narcotics agents in some illegal way. Isn't that correct?

And if the guy driving the car did not own the car, then the owner must be notified. Also, the owner of the apartment house or the property being occupied by the person under surveillance would have to be notified under the legislation. Is that not correct?

Mr. CARY. Anyone on which a name exists would be; yes, sir.

Mr. BROWN. You would have to notify anyone in that file. This is true even when you have a relatively common last name such as Brown. And I must say, that also separates us, Ms. Abzug, because there may be a whale of a lot more Browns to get confused than there are Abzugs.

Mr. CARY. That is correct.

Mr. BROWN. So there is a bit of a problem here as well. Can you give me any idea of what the number of names might be?

Mr. BUSH. Congressman, we do not have the figures here, but it is possible that we could submit something meaningful for the record, if that would be acceptable.

[The information follows:]

Of the approximate 200,000 names in the CHAOS index about 96 percent represent only name entries with no further identifying information.

Mr. BROWN. In your testimony, you said something like 200,000 names, didn't you? Does that embrace just the people under surveillance or does that embrace the collateral people on the list—the people who own the apartment houses and the people who lease the automobile and that sort of thing?

Mr. CARY. That was basically the number of people in the Chaos program. This was the number of names of people developed in the Chaos program for one reason or another.

Mr. BROWN. As under surveillance?

Mr. BUSH. They were just names in the file, I am advised, and there were 215,000 additional names of persons whose mail had been opened.

Mr. BROWN. But that does not involve all of these collateral things that are called for in this legislation.

Thank you, Madam Chairwoman.

Ms. ABZUG. Mr. Conyers.

Mr. CONYERS. Thank you, Madam Chairwoman. This will be brief. For how many years, Mr. Director, were the illegal mail openings carried on?

Mr. BUSH. They were carried on for around 20 years.

Mr. CONYERS. What number of illegal mail openings occurred during that 20-year period?

Mr. BUSH. We have been using, sir, a figure of 215,000.

Mr. CONYERS. What use was made of this intelligence gathering as a result of illegal mail openings over the 20 years?

Mr. CARY. This was used basically by the FBI and the counterintelligence organizations.

Mr. CONYERS. What do you mean when you say that?

Mr. CARY. It was sent to the FBI and the counterintelligence organizations.

Mr. CONYERS. Do you mean that they were sent to the FBI for whatever disposition they wanted to make of that information? Is that what you mean?

Mr. CARY. Yes, sir; in connection with their function.

Mr. CONYERS. What function?

Mr. CARY. The FBI's function. I don't know just what disposition was made.

Mr. CONYERS. If they were opening mail on a rather random basis illegally and of people who presumably were not violating the law, what function would the FBI have to use that intelligence?

Mr. CARY. Mr. Conyers, I understand that about 58,000 letters were refered to the FBI. If there were any indications that there might be something of interest to the FBI, it was turned over to the FBI.

Mr. CONYERS. Were there other agencies to whom this mail was directed?

Mr. CARY. Not that I am aware of, sir.

Mr. CONYERS. Did any information that was improperly collected or distributed come from local or State police files?

Mr. CARY. I cannot answer that question categorically, Mr. Conyers.

Mr. CONYERS. The answer should be "Yes," don't you think? Certainly, it would in some instances.

Mr. CARY. Basically, we were collecting foreign information with respect to these individuals. But I cannot say categorically that no information came from some domestic source.

Mr. CONYERS. Now if I understand your testimony correctly, Director Bush, you say that this information was passively gathered and that it was not acted upon. Is that correct?

Mr. BUSH. Let me consult with counsel on this, Mr. Conyers.

In the Chaos program, it was collected and not used against these people in an action sense by the Agency.

Mr. CONYERS. Is that a correct statement when we analyze the kinds of activities the counterintelligence program indulged in? For example, the sending of anonymous or fictitious materials to members or groups is pretty active, isn't it?

Mr. BUSH. That is the FBI, sir. That question should be directed to the FBI, not the CIA.

Mr. CONYERS. I thank you; I stand corrected. I have no further questions, Madam Chairwoman.

Ms. ABZUG. I want to get some clarity about the second part of the legislation before us. Your testimony and your predecessor's testimony before this committee concerning the removal by amendment of the blanket exemption of the CIA is that you believe it to be necessary not so much to protect your illegal activities, but for the purpose of protecting your sources and methods. Would an amendment to the Privacy Act which specifically exempted information concerning your sources and methods therefore be satisfactory?

Mr. BUSH. Madam Chairwoman, it is not at all our objective to protect illegal activities. And second, I think it would take care of the problem.

Ms. ABZUG. We have a very interesting proposition here. I would like to try to understand it because I really do not.

I am an individual about whom you have a file. You are an individual about whom there is a file [indicates Mr. Brown]. Probably

both are true the way the CIA operates. I am an individual about whom my Government has collected information illegally and in violation of the Constitution—which is very near and dear to this country and to the individuals in it—and in violation of the criminal law, et cetera. Do I not have a right to know what my Government is doing to me?

Mr. BUSH. You certainly do.

Ms. ABZUG. Particularly when it is illegal activity, do I not have a fundamental right to know this?

Mr. BUSH. I think you should apply under the Freedom of Information Act.

Ms. ABZUG. Suppose there were no Freedom of Information Act and there was a conduct of activity against me. Do I not have a right to know it?

Mr. BUSH. But there is a Freedom of Information Act, Madam Chairwoman, and, therefore, you should apply.

Ms. ABZUG. But I do not know anything about the illegal action that was taken against me. It is not as if I am dealing with criminals; I am dealing with the Government. Does the Government not have an obligation to notify an individual that certain information has been collected which may be incorrect information? It may be false information which has not only been collected, but which has been disseminated to any number of places.

Does not that individual, in order to have confidence in the proper functioning of Government, have a right to expect that Government to say:

> We made a mistake and we would like you to know of this file and we would like you to be able to look at your file because we may be disposing of it. There may be certain things that have taken place here which you may want to change; there may be certain things you may want to do about this.

Does not the Government have an obligation to do this in order to restore confidence in our system of Government? That is the question that you confront, Mr. Director.

You come here very correctly and say:

> I want to put that all behind me. I had nothing to do with the past. I want to conduct my Agency lawfully.

But I say that unfortunately the citizens of this country do not know this about you and about the Agency. And they have a right to expect that indeed if that is your objective that you are going to prove to them that they have rights as citizens and that when the Government violates those rights, the Government corrects it.

That is the precious thing in this system of ours. The people are sovereign and, therefore, have a right to expect and determine that the Government will correct its errors because the Government is the people. Therefore, the Government has the responsibility to tell the people against whose interests they have illegally acted.

And this is the question that you cover by destruction procedures. Now I do not know what you are going to destroy. I will ask you to supply that information to this committee. Do you want to destroy all of the Chaos files? What about the mail openings? What about records on domestic organizations which were infiltrated in the Washington area? Are you going to destroy all of the information that

you have collected and disseminated with respect to those? And it is not clear as to where you have disseminated that information and what was done with that—contrary to the testimony of your counsel.

What about the disseminations to the White House? Is that going to be destroyed? Or will that be maintained in some kind of major computer record forever and a day against the interests of the citizens of this country? Could you answer that last question?

When you decide to destroy a file which has been disseminated through the Chaos program to the FBI and to other agencies, as well as to the White House, how are you going to secure the destruction of the files in the White House?

Mr. BUSH. I think the answer is that we have the records and can notify the agencies. And we can speak for what the CIA does in that regard. We can notify the other agencies.

Ms. ABZUG. What about the White House, Mr. Director?

Mr. BUSH. I cannot speak for some other agency or the President of the United States as to what disposition will be made of the records. I can speak that the CIA wants to dispose of the records in accordance with the recommendations of the Rockefeller Commission, in accordance with what appears to be the will of the Congress, and in accordance with the Privacy Act. Now I have to keep coming back to that because this, I think, is the fundamental point on which we have a disagreement here.

Ms. ABZUG. I would hope that you would make it clear to the public that all of the information that you are destroying is information that is being destroyed in each place where it was disseminated. You have that burden. And you will have that burden of proof under the Privacy Act. If you fail to provide the proper notification, the burden is totally yours.

I am trying to make it easier for this Agency to function in the destruction by taking the burden and part of the responsibility of notice so that there can be some action taken by the citizen with respect to that information.

Now if you want to assume the burden of continuing additional activity, which may or may not be in complete conformance with present law, that is your responsibility. But it is quite clear from the evidence which was brought together by committees of the House and the Senate and the Rockefeller Commission that your Agency collected information illegally, that it still maintains that information, that it has been disseminated to many places, and that there will be no orderly way in which that destruction will be carried out unless there is notification and a procedure developed.

I do not know how you develop the procedure for the destruction of these files as yet. Could you respond to that, Mr. Director.

Mr. BUSH. I cannot speak to the full procedure, but, Madam Chairwoman, the Privacy Act does say that people will comply, including other agencies. And I would assume that other agencies and branches will follow that Privacy Act.

Ms. ABZUG. I assume we will discuss this with other agencies. But with respect to your Agency, how do you respond?

Mr. BUSH. The CIA will comply with the law as fully and as openly as we possibly can. Openly and fully. And that is the only answer I can

give you because we do not have a master plan that would go to other agencies and say, "Be sure to do this; be sure to follow the law."

Perhaps we should. I am not arguing the point, but we have no such plan in draft.

Ms. ABZUG. The other question I would like to ask you is: You have, I gather, some form of index which would determine which files you wish to destroy and which files you wish to maintain, do you not?

Mr. BUSH. We have an index, but I am not sure that the index alone would indicate what files should or should not be destroyed.

Ms. ABZUG. How will you determine that?

Mr. BUSH. We will have to review all of the files to make that determination.

Ms. ABZUG. You stated earlier in your testimony that the reason you did not think it was fair to be asked to notify the citizens of this country against whom there have been files collected illegally and in violation of their constitutional rights was that you did not want to have to go through the work of reviewing all of this and that this might engage you in further violation of the privacy of this individual. And yet you have just stated that you have to review all of these files in order to destroy them.

Mr. BUSH. Inside. The other program would have us going outside and collecting information on American citizens. And that the CIA does not want to do.

Ms. ABZUG. In what way, Mr. Director?

Mr. BUSH. To identify these individuals. If you have a J. Abzug, you have to go around and find out whether it is Julia Abzug or John Abzug. We have to do that kind of investigation to home in on the particular name.

Ms. ABZUG. There is nothing illegal about ascertaining whether someone's name is Julia or John. If that is the only illegal activity that the CIA will conduct in the future, I think the rest of us in this country can rest easy.

Mr. BUSH. I hope you can rest easy. But that is the intent of the way the CIA is being administered.

Ms. ABZUG. I am suggesting, Mr. Director, that I really cannot conceive, from what I know of you in your past functions in other activities in the Government, that you believe that the reason you should not notify citizens of the illegality and the unconstitutionality of the invasion of their rights is because you might have to find out how to address them in a letter of notification.

Mr. BUSH. That is not the whole reason, Madam Chairwoman, and I hope that the testimony does not come through with that as the thrust. That is not the whole reason and I am glad to have an opportunity to correct the record in that regard.

Ms. ABZUG. I do not know of any other reason.

Mr. BUSH. I have certainly indicated other reasons.

Ms. ABZUG. You are going to have to go through a whole process in order to decide which files to destroy. You are going to have to check names, you are going to have to doublecheck the indexes and the cross-indexes which have been developed over the years, and you are going to have to undo that.

You are then going to have to take unilateral action which may again engage you in, I suggest, some peril which you need not undertake if

you would notify the individuals against whom there are illegal files. Then the individual can instruct you as to whether the file should be destroyed or maintained. And you will have fulfilled your responsibilities under the Privacy Act.

Mr. BUSH. Improper records must be destroyed. To go out and do what has been suggested, we think would be a further invasion of the privacy of some people. So we simply have an honest difference of opinion as to what should be done.

Ms. ABZUG. I know what the real problem is. We should both contemplate this, as should all of the members of the committee and the Government. The problem is that those who have collected these files illegally are in charge of destroying these files. That raises a very interesting question.

Mr. BUSH. For one who has no confidence, it raises the question of whether it will be done properly. All I can do is recognize that I intend to fully cooperate with the Congress, to fully cooperate with oversight, and I would be called upon to certify, in as much detail as our oversight committees requested, this information. I am prepared to give it to them.

Also, we are reviewed by the Privacy Commission in terms of our compliance.

Ms. ABZUG. I know that the Director wants to leave, but Mr. Harrington has some questions which he would like to ask, if you would be good enough.

Mr. BUSH. Madam Chairwoman, I would be glad to stay. As I indicated to you, I flew back from California and got here at 3 this morning to make this appearance.

I indicated that I had twice changed a luncheon appearance which has some import with a member of the Foreign Intelligence Advisory Board. But, certainly, I am here and I would be glad to respond to the questions.

Mr. HARRINGTON. Mr. Bush, narrowing your responses to the Chaos program, could you outline the methods used by the Agency, as you have been informed of them, to gather this information? What were the various bases that were relied on over the period of time this program was ongoing to establish the files that are the subject of this hearing?

Mr. BUSH. I do not have the information. It is covered in the Rockefeller report. I just have not been thoroughly briefed on what methodology was used.

Mr. HARRINGTON. You have around you people with a cumulative service of perhaps better than a century. Do you think they could help in specifically dealing with those questions?

Mr. CARY. Basically, Mr. Harrington, I believe we were asked to find if there were foreign links to some of these organizations in the United States.

Mr. HARRINGTON. What methods did you use in determining that?

Mr. CARY. We used our foreign intelligence resources abroad.

Mr. HARRINGTON. I am talking of the domestic setting which has been the subject of concern.

Mr. CARY. A lot of it, Mr. Harrington, is open literature.

Mr. HARRINGTON. Would you like to review the open literature for us, Mr. Cary?

Mr. CARY. Anything in the press items——

Mr. HARRINGTON. I thought you meant it in a somewhat different sense. I thought you meant that it was widely known as to how the Agency conducted this activity. You are talking about access to established material or recognized material.

What else did you do?

Mr. CARY. That was essentially it.

Mr. HARRINGTON. There were no break-ins?

Mr. CARY. No—not under the Chaos program. I think you asked your question with respect to the Chaos program.

Mr. HARRINGTON. And under the Chaos program, break-ins were not the basis for any of the information in these files.

Mr. CARY. That is correct.

Mr. HARRINGTON. Was there surveillance of any kind—electronic or otherwise?

Mr. CARY. That could well be. I cannot make a categorical statement on that to exclude that.

Mr. HARRINGTON. Were there informants from other agencies?

Mr. CARY. Yes.

Mr. HARRINGTON. When it comes to the concern that has been expressed not just about the problems posed for the Agency, but in dealing with the propriety of the conduct as it would affect the Justice Department role, where does all of this lead? Has there been a review of the files internally in terms of the basis for this information, and references, where it has been dubious, to the Justice Department for prosecution except in those one or two well-known instances involving conduct before the Congress?

Have you in fact conducted such a self-review that has led you to present material that is questionable in origin, as it affects our existing laws, to the Justice Department for further activity?

Mr. CARY. Mr. Harrington, all I can indicate on this is that a lot of this was identified in the review that Mr. Colby testified to before the committee in 1973 to determine what questionable activities might be going on. And in that connection and in that category, a review was made.

Mr. HARRINGTON. That was the internally induced Agency effort in the spring of 1973 under Schlesinger, I assume. I am talking about the broad programs that have been identified variously as Chaos, and the Office of Security files which apparently was responsible for conducting certain other activities against organizations.

I am talking about the use of material and how it was acquired, and whether or not any effort has been made in the period since that time to determine whether the Justice Department should be involved in proceeding, or looking at the need to proceed, as far as how that information was gathered.

Mr. CARY. I believe, Mr. Harrington, that the Chaos files were from an entirely separate program. The other activities which you mentioned, surveillance or entries or whatever, are matters which have been brought to the attention of the Department of Justice and are under review by the Department of Justice.

Mr. HARRINGTON. I conclude where I started, Mr. Bush. It is very difficult to exculpate you fully from the past that we are dealing with.

However, I still remain puzzled as to how this exercise which you

describe, and which is reminiscent of the language of a predecessor of yours about trusting the good intentions of honorable men, is enough of an assurance to the American public. Will leaving it to the executive branch to engage in all of this self-reflection, agonizing thought it may be, satisfy the need which you perceive and apparently share: to reassure people that we can rely on this oversight approach?

The apparent spottiness of memory and the inability to be forthcoming when it comes to these things leave me, frankly, very cynical when it comes to having any particular trust, when it comes to suggesting that we leave it your best judgments collectively as to how you deal with the activities of the last generation. You indicate that we should be assured by now that these things are well in hand and that you are satisfying a wide body of American public opinion which feel to the contrary.

Mr. BUSH. The Privacy Commission, Mr. Harrington, should satisfy some of your legitimate concerns because, as I understand it, they look into these matters.

Mr. HARRINGTON. Does the Foreign Intelligence Advisory Board satisfy that, Mr. Bush? It is like a gathering of almuni.

Mr. BUSH. I did not suggest that, sir; you suggested that.

Mr. HARRINGTON. I will give you an example. The Lockheed Commission investigation structured by the executive branch to deal with the problems posed by scandals in foreign governments is an example. Why should we believe this sort of thing?

Mr. BUSH. Believe what sort of thing, sir?

Mr. HARRINGTON. Why should we believe the sort of thing that says in effect on the bottom line, "You trust us to engage in self-policing."

Mr. BUSH. I am not saying, "trust us," sir. I hope you will trust. But I am saying the Privacy Commission will look into this to see that we properly comply with the law.

You are asking us to go out—I had better be careful that your position is as the chairwoman's—to go out and investigate other citizens to see if this is the same Harrington on there, and we do not want to do that. And I ask you to assign to us a certain bit of good will. We are not saying "trust us." We are following the procedures of the law. And whatever the House of Representatives, along with the Senate, enacts, we will follow the law.

And I am upset when I keep hearing these insinuations that we are not following the law or will not follow the law. I must take exception to that.

Mr. HARRINGTON. I am not making an insinuation, Mr. Bush, beyond the fact that I think people have had it up to their eyebrows when it comes to the executive branch's dealing with the problems posed by the mass of evidence which has been developed since 1973, and perhaps fleetingly before that, that says, in effect:

> We will gather together the principals, present and past, that have participated in this activity, some with good will and some with philosophic differences, and have that suffice for the kind of basic restructuring and reorganization and reevaluation that we basically have a right to expect—given where this country has been in the last generation.

I do not think it is adequate. I expect that someone like yourself who has been in the political process in the past would be aware of that profound malaise.

Mr. BUSH. Mr. Harrington, you and I both share the critical concern for the cynicism and the lack of confidence in the institution. You cited the Congress; you cited the lack of confidence in the people in the executive branch; you certainly cited the lack of confidence in the Central Intelligence Agency.

Let me simply assure you that I will do my level best, based on a political past and based on a diplomatic past and based, hopefully, on some sensitivity, to do what we can to keep our house in order and to comply with the law.

We add to the cynicism if we suggest that the testimony I have had here today is an attempt to avert responsibility to the people. That is not what we are here for. If you think it is, then I think we are just simply far apart philosophically or far apart in terms of intent. This is not what we are intending.

We are intending to comply. We will comply.

Mr. HARRINGTON. Will you provide the Privacy Commission, which you have cited as your example of an objective third-party entity, with the files that are the subject of this kind of discussion and give access to them in terms of how you dispose of the material?

Mr. BUSH. I am advised, sir, that that is a requirement of the law. We will of course very thoroughly report to our oversight committees set up by the Congress. So there are two safeguards there with which we should certainly cooperate fully. And we will.

Mr. HARRINGTON. What is the other?

Mr. BUSH. The Congress itself.

Mr. HARRINGTON. And the Privacy Commission will have access to these files?

Mr. BUSH. Subject only to sources and methods, it will.

Ms. ABZUG. Will the gentleman yield?

Mr. HARRINGTON. That reminds me of some answers that I have heard before from a predecessor of yours. A broad, forthcoming statement is followed by a paragraph of qualifications.

Ms. ABZUG. Will the gentleman yield?

Mr. HARRINGTON. Certainly.

Ms. ABZUG. I assume that you will be prepared to provide similar information to this committee.

Mr. BUSH. I will look into that and check that with our oversight committees and get back to you on that, Madam Chairwoman.

Ms. ABZUG. Check that with whom?

Mr. BUSH. All of our oversight committees. I am not familiar with the procedures as to whom and in what order we supply information requested. But if a request is made, certainly we will give it proper consideration.

Ms. ABZUG. You did point out earlier and you are aware of the fact that this committee has oversight and legislative jurisdiction over the Privacy Act. There is no other committee in the House that does.

Mr. BUSH. Yes.

Ms. ABZUG. I just wanted to bring that to your attention. Therefore, if you are supplying information concerning the carrying out of the provisions of the Privacy Act, I find it a little difficult to understand why you should have to check.

In any case, we shall make a formal request and then you will have the question before you. And I would suggest that the jurisdiction is quite clear. That is set up by Congress.

I realize you have been most patient. We do have many more questions, but instead of keeping you from your duties which are important to be carried forward, we will instead ask unanimous consent of the committee to excuse this witness and propound questions in writing to the Director and his counsel for the record.

There are a great many questions for which it is important for us to have answers in order to properly determine what legislation will be necessary here and what oversight efforts have to be carried out by this committee.

Mr. BUSH. Madam Chairwoman, I hope I do not need to assure you of this; but, whatever law is passed by the House and Senate and enacted into law, we will comply with it.

Thank you very much for your courtesy.

Ms. ABZUG. Thank you very much for coming.

Our next witnesses for the Justice Department appear to be Mary C. Lawton, Deputy Assistant Attorney General, Office of the Legal Counsel; Irwin Goldboom, Deputy Assistant Attorney General, Civil Division; Thomas S. Martin, Special Assistant to the Assistant Attorney General, Civil Division; and Michael E. Shaheen, Jr., Counsel on Professional Responsibility.

Would you please come forward and raise your hands.

Do you each solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY IRWIN GOLDBLOOM, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION; THOMAS S. MARTIN, SPECIAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION; MICHAEL E. SHAHEEN, JR., COUNSEL ON PROFESSIONAL RESPONSIBILITY; AND PAUL DALY, AGENT IN CHARGE, OFFICE OF CONGRESSIONAL AFFAIRS, FBI

Ms. LAWTON. I do.

Mr. GOLDBLOOM. I do.

Mr. MARTIN. I do.

Mr. SHAHEEN. I do.

Mr. DALY. I do.

Ms. ABZUG. There is a sixth person at the table. Would you be good enough to identify yourself for the record. I do not believe you have been called forward here today.

Ms. LAWTON. It was at your request.

Ms. ABZUG. I would like to have his name.

Mr. DALY. I am Paul Daly, Agent in Charge of the Office of Congressional Affairs, FBI.

Ms. ABZUG. Were you sworn in, Mr. Daly?

Mr. DALY. Yes; I was.

Ms. ABZUG. I regret that the Attorney General of our great Nation has not seen fit to come before the committee this morning—or any other time for that matter. I think his views on this very important subject would be extremely important for the deliberation of this committee. I look forward to the time when the Attorney General will respond to this committee. A number of requests have been made of

him. And our work could be enhanced by his intelligence, his experience, his background, and his view of his responsibilities. I wish you would convey to the Attorney General that this committee looks forward to that opportunity and finds it most unusual that he has yet to see fit to come before this committee when requested to do so.

In view of the lateness of the hour, I would like to suggest that the testimony of Mary C. Lawton, Deputy Assistant Attorney General, Office of Legal Counsel, be incorporated into the record in full, if that is all right with the witness. We will then proceed to ask questions of the witness.

[Ms. Lawton's prepared statement appears at p. 76.]

Ms. ABZUG. I would like to know just how a decision has been made by the Justice Department as to who to notify, what numbers of persons to notify, and whether the notification under the proposed regulations of the Justice Department covers, in your opinion, all of those individuals who have actually been harmed by this Cointelpro.

Ms. LAWTON. I would ask Mr. Goldbloom to explain the decisionmaking process since he was involved in it and I was not.

Mr. GOLDBLOOM. Madam Chairwoman, the Attorney General, on April 1, 1976, announced the establishment of a special review committee to notify individuals who have been personally harmed by improper Cointelpro activities and to advise them that they may seek further information from the Department if they wish.

Notification is to be made in those instances where the specific Cointelpro activity was improper, actual harm may have occurred, and the subjects are not already aware that they were the target of Cointelpro activities.

Ms. ABZUG. May I interrupt you there? How do you know whether a subject is already aware?

Mr. GOLDBLOOM. Some of the subjects may have already made requests under the Freedom of Information Act and have been furnished information concerning the Cointelpro activities.

Ms. ABZUG. If the FBI wrote anonymous letters containing falsehoods to a wife, as apparently was done, to break up a marriage and the couple has not been divorced, will she and the husband be notified?

Mr. GOLDBLOOM. There is currently in the process a committee to determine whether or not there has been harm as a result of Cointelpro activities.

Mr. Shaheen is here and is able to explain the mechanics of the operation to the committee and what the proposals will be in terms of the actual notification. I would ask him to respond to that.

Mr. SHAHEEN. Madam Chairwoman, would you ask the question again and I will be happy to respond to it.

Ms. ABZUG. If the FBI wrote anonymous letters, as it did, containing falsehoods to a wife in an attempt to break up a marriage and if the couple has not been divorced, will she and her husband be notified?

Mr. SHAHEEN. If there is any question of harm, it will be resolved in favor of notification. Whether harm occurred or not, if we have a doubt, it will be resolved in favor of notification.

Ms. ABZUG. How do you know what actual harm has been caused?

Mr. SHAHEEN. Bureau files will, in most instances, reflect that information.

Ms. ABZUG. And how do you know what kinds of damages were suffered?

Mr. SHAHEEN. We won't know with great precision, Ms. Abzug.

Ms. ABZUG. How many individuals were victims of Cointelpro?

Mr. SHAHEEN. Over 3,000.

Ms. ABZUG. Is that, therefore, the parameter of your notification?

Mr. SHAHEEN. Yes; that is correct.

Ms. ABZUG. And are you planning to notify over 3,000?

Mr. SHAHEEN. We are planning to notify as many as were targets of improper activity who may have, did, or were likely to have suffered harm as a result of improper Bureau activity.

Ms. ABZUG. That leads to a very interesting question. How do you define "harm"?

Mr. SHAHEEN. When we cannot specifically find harm, we will resolve it, as I indicated earlier, as having occurred and will resolve it in favor of notification.

Mr. CONYERS. Will the gentlewoman yield?

Ms. ABZUG. Before I yield, let me say that that would seem to be every case.

Mr. SHAHEEN. Ms. Abzug, in several hundreds of instances, the activity of the Bureau was proper. One example would be in supplying information to other agencies of Government that a certain gentleman was receiving a veteran's disability check when he was 100 percent able—not disabled. That, we do not regard as improper activity.

Ms. ABZUG. I yield to the gentleman.

Mr. CONYERS. Thank you. Would you again identify yourself by name and title?

Mr. SHAHEEN. I am Michael E. Shaheen, Jr., Counsel on Professional Responsibility.

Mr. CONYERS. Just what do you do in the Department of Justice?

Mr. SHAHEEN. The Office of Professional Responsibility, recently created by the Attorney General, in December of last year, receives and reviews allegations of wrongdoing, both criminal or inappropriate conduct, by all departmental employees. This includes all of the component agencies of the Department and covers all levels from the Attorney General to the lowest level of employees.

Mr. CONYERS. How many people work with you in this newly created part of the Department of Justice?

Mr. SHAHEEN. In my immediate office, there are three attorneys. Assisting me in various projects assigned to me by the Attorney General, there are probably nearly 100 people. A lot of them are attorneys; a lot of them are FBI agents; a lot of them are paralegals.

Mr. CONYERS. In regard to the counterintelligence program where we have identified some 3,000 people who were victimized by it, how many letters of notification have gone out?

Mr. SHAHEEN. None.

Mr. CONYERS. When, if ever, are they going to go out?

Mr. SHAHEEN. Very shortly.

Mr. CONYERS. This month?

Mr. SHAHEEN. I cannot promise that.

Mr. CONYERS. Next month?

Mr. SHAHEEN. Yes, sir.

Mr. CONYERS. So we don't know how many are going to be going out until you send them out.

Mr. SHAHEEN. That is correct; yes, sir.

Mr. CONYERS. You appreciate, Counsel Shaheen, that you have a very large responsibility indeed in trying to correct the wrongs that were perpetrated upon, I suppose, thousands upon thousands of innocent American citizens, do you not?

Mr. SHAHEEN. I appreciate that responsibility.

Mr. CONYERS. I am sure you do. Now the question that I think is most important here is a description of who were the targets of the counterintelligence program. We identified the Communist Party, U.S.A., did we not, as one of the organizational targets?

Mr. SHAHEEN. Yes, sir.

Mr. CONYERS. We identified the Socialist Workers Party as an organizational target?

Mr. SHAHEEN. Yes, sir.

Mr. CONYERS. And then we lapse into typical bureaucratic language by saying that there were black extremists. I don't know if that means organizations or individuals. Former Attorney General Saxbe referred, in his testimony, to 26 instances in connection with black extremists.

Now were those persons or organizations?

Mr. SHAHEEN. You said that we lapsed into bureaucratic language. Are you referring to a statement by someone other than myself?

Mr. CONYERS. Yes. I am referring to the former Attorney General of the United States.

Mr. SHAHEEN. We can be far more precise. "Black extremists" refers to organizations as well as individuals.

I may reach a point, Congressman Conyers, where the gentleman from the Bureau can respond with greater precision.

You may well ask what is meant by "the new left."

Mr. CONYERS. Wait a minute; before we slip into more bureaucratic language, let us stay with "black extremists." You say that they are both organizations and individuals.

Mr. SHAHEEN. Yes.

Mr. CONYERS. Which ones?

Mr. SHAHEEN. Which ones what?

Mr. CONYERS. Which organizations and which individuals?

Mr. SHAHEEN. I am going to defer to Mr. Daly of the Bureau.

Mr. DALY. Mr. Conyers, are you interested in the identities of the organizations?

Mr. CONYERS. And the individuals.

Mr. DALY. I do not know the individuals by name. We are in the process of reviewing them. The organizations that have been identified publicly over the past have been the Black Panther Party and various Klan organizations.

Mr. CONYERS. Ku Klux Klan?

Mr. DALY. Yes. That would be in the white hate group.

Mr. CONYERS. Before we slip into the white hate group, let us just stay with the black extremists. We would like to keep them separated for purposes of this discussion, would we not?

Now the Black Panthers is one.

Mr. DALY. That is by far the largest one.

Mr. CONYERS. Let's name some small ones then.

Mr. DALY. I cannot recall the small ones, sir.

Mr. CONYERS. Then let us name some middle-sized ones. Let us name any kind of any size.

Mr. DALY. United States was an organization on the west coast.

Mr. CONYERS. Which?

Mr. DALY. United States. That is U–S.

Mr. CONYERS. How many black extremist groups or individuals are being considered for notification as victims or targets of the counterintelligence program?

Mr. DALY. Every victim is being considered.

Mr. CONYERS. But how many?

Mr. DALY. We are just in the process of reviewing.

Mr. CONYERS. You cannot tell me that because you have not gotten your list together.

Mr. DALY. That is right.

Mr. CONYERS. You would be able to advise this committee, then, in more detail in this area after you have done the preliminary work that is necessary?

Mr. DALY. As to the number of individuals notified?

Mr. CONYERS. And organizations.

Mr. DALY. It is our intention not to notify organizations for two reasons. One, the vehicles of disruption and neutralization, the so-called targets of Bureau actions, were individuals. The other reason is that with the exception of maybe one or two organizations, all are aware of their existence as targets. We feel they have been placed on notice. In fact, they are either engaging us in lawsuits or are pursuing FOIA.

Mr. CONYERS. Do you mean the organizations?

Mr. DALY. Yes, sir.

Mr. CONYERS. What organizations are there? If you are in lawsuits with them, we must be able to discuss them here. What are their names?

Mr. DALY. The Socialist Workers Party, to name one.

Mr. CONYERS. Wait a minute. We are talking about black extremists.

Mr. DALY. In black extremists?

Mr. CONYERS. I am still in that first category. I am sorry but I haven't been able to get an answer on that yet.

Mr. DALY. I can understand that, Mr. Conyers.

I am going to ask Mr. Goldbloom to discuss litigation.

Mr. CONYERS. I am not interested in the litigation. I am just interested in the names of the organizations that are in litigation. Name any of the people who are suing.

Mr. GOLDBLOOM. Look at page 13 of the statement.

Mr. CONYERS. What names appear on page 13?

Mr. GOLDBLOOM. *Muhammad Kenyatta, et al.* v. *Clarence M. Kelly*, civil action 71–2595. in the Eastern District of Pennsylvania.

Mr. CONYERS. Is that an organization or an individual?

Mr. GOLDBLOOM. There are a number of people. That is an individual, but there are a number of plaintiffs in this lawsuit.

Mr. CONYERS. I see. Is he a part of a black extremist organization?

Mr. GOLDBLOOM. We do not know that at this moment. But this is a lawsuit in which the Cointelpro activities are a part of the framework of the litigation. It is one of the issues involved.

Mr. CONYERS. So we have the Black Panthers and we have this individual suing. Are there any other black extremist groups or organizations?

Mr. GOLDBLOOM. I believe the last case listed on page 14, that of *Charles Koen* v. *Estate of J. Edgar Hoover, et al*, Civil Action 75–2076, is.

Mr. CONYERS. Is he a black citizen?

Mr. GOLDBLOOM. I do not know specifically, but I do know that that lawsuit encompasses activities which can be broadly termed as the Cointelpro activities of the Bureau.

Mr. CONYERS. You were nodding your head, sir. Were you indicating that he is a black citizen?

Mr. DALY. Yes, sir.

Mr. CONYERS. Is he a black extremist?

Mr. DALY. What I am saying is that those actions arose out of the black extremist Cointelpro program. That is all I am saying.

Mr. CONYERS. Ladies and gentlemen, then, is it correct to say that for me to pursue an identification of the organizations and the individuals that are referred to in terms of "black extremists," "white hate groups," and "new left," it would require coming back at a different point of time after you have been able to do the preliminary work that Counsel Shaheen has indicated? Is that correct?

Mr. GOLDBLOOM. Yes.

Mr. CONYERS. And I get an affirmative nod from everybody at the table. I don't have any further questions, Madam Chairwoman, but I would hope that we could move toward this identification as early as possible.

Thank you for your cooperation.

Ms. ABZUG. The committee stands in recess for 15 minutes in order to answer a vote.

[A short recess was taken.]

Ms. ABZUG. This hearing is called to order.

Mr. Shaheen, were you present in the room when the Director of the CIA, Mr. Bush, testified?

Mr. SHAHEEN. Yes; I was.

Ms. ABZUG. Why was it determined that there be a notification program to alert the Cointelpro victims of what was done to them by the FBI?

Mr. SHAHEEN. Why was it determined to notify victims who experienced harm in Cointelpro?

Ms. ABZUG. Right.

Mr. SHAHEEN. It was determined as a result of a study authorized by the Attorney General—the Attorney General and the committee to which Mr. Goldbloom earlier alluded. They made their presentation to the Attorney General and he made that decision.

Ms. ABZUG. How will you deal with the mail problem, for example, that Mr. Bush made so much of? How are you going to reach these individuals?

Mr. SHAHEEN. Ms. Abzug, the mail openings and the surreptitious entries——

Ms. ABZUG. No, no. I mean notification problems.

Mr. SHAHEEN. That we cannot address at this time because they are the subject of departmental inquiry and investigations.

Ms. ABZUG. Let me get that clear. Those people who were the victims of mail openings have now been referred to the Department of Justice, according to Mr. Bush. Are you going to do anything about notifying those individuals?

Mr. SHAHEEN. I cannot answer that question; perhaps Mr. Goldbloom will.

Ms. ABZUG. Can you answer that question, Mr. Goldbloom?

Mr. GOLDBLOOM. There is presently a Criminal Division investigation of the mail opening program by the CIA. Until that investigation has been concluded, I do not believe there is any consideration of other aspects of notification of persons who had their mail opened.

I do know, as Mr. Bush testified, individuals who have had their mail opened and have made requests of the CIA, under the Freedom of Information Act or the Privacy Act, have been so notified that their mail was opened.

Ms. ABZUG. How are you going to deal with the specific technical questions which Mr. Bush raised, such as not knowing who to notify?

Mr. SHAHEEN. Are you asking me, Madam Chairwoman?

Ms. ABZUG. You are all free to participate in this event. There is a lot of freedom of information and discussion allowed at this hearing.

Mr. SHAHEEN. I do not know how to answer that question. I am not that intimately familiar with it.

Ms. ABZUG. Who is?

Mr. SHAHEEN. I suppose the CIA is.

Ms. ABZUG. No, no; that is not the question. One of the reasons given for not wanting to notify is that they feel they would have to conduct further investigations in order to make sure of the proper name of the party injured. You collected a lot of information about a lot of people for a lot of years illegally, yet when the time comes to do something about it, you do not know who that person is—which just shows what is wrong with the program to begin with.

Mr. SHAHEEN. I can speak for the Cointelpro.

Ms. ABZUG. But so far, you have not answered that question. I have directed it at you four times. Maybe someone else wants to answer it.

Mr. SHAHEEN. We are going to seek the addresses of those individuals who have been targets and harmed and who are subject, therefore, to our notification program by checking the relevant Bureau files at headquarters and field offices, and then checking telephone directories, city directories, and cross-directories in the cities involved.

Beyond that, further investigation would reinstitute Cointelpro as a program of the FBI, which we do not intend to do.

Ms. ABZUG. And you do not regard that kind of investigation as an invasion of privacy?

Mr. SHAHEEN. Not looking in telephone books or Bureau files internally.

Ms. ABZUG. One problem with my concern over the proposal of the Justice Department is that your programs affected a large number of groups. Some of the questioning before we recessed indicated that there did not seem to be a great deal of clarity about whether or not

we could be certain that the FBI, in notification and in defining Cointelpro, is making all relevant files the subject of notification.

In addition, I recall that when the Attorney General appeared before the Church committee—he likes to go to Senate committees—he said that he found other items in the Cointelpro project of which he was not aware. So I am just wondering how you can make certain that all of the people who have been abused by the FBI are going to be notified.

Mr. SHAHEEN. There was an activity officially recognized by the Attorney General called counterintelligence program, the acronym for which is Cointelpro. That is what is presently under review by the committee I chair.

We cannot categorically deny that there was not other Cointelpro-like activity which may develop in some field office files. But we are dealing with an official program of the Bureau. And as unfortunate, foolish, and outrageous, as the Attorney General has characterized it, as it may have been, it did exist. And it is that program, going under that acronym, that we are presently addressing. Other activity may be the subject of another inquiry by the Attorney General.

Ms. ABZUG. I have a very interesting problem with all of that. For example, Martin Luther King, who was the victim of FBI anonymous letters, electronic surveillances, and other harassments over a period of years, was not included in the Cointelpro.

Now under the Justice Department's notification, where would his case fit in?

Mr. SHAHEEN. It would not be part of official Cointelpro review by the notification committee. I might also add, Ms. Abzug, that the Martin Luther King activities, vis-a-vis the Bureau, are presently under review by the Department at the specific direction of the Attorney General for comparable attention.

Ms. ABZUG. That is a very important piece of information. But what is more significant is that if other citizens similarly situated have been the victims of that kind of program, even though they may not have been as well known or as famous as Mr. King, but have been victims of the FBI's activities, does that mean that they will not be notified under the Justice Department's notification system?

Mr. SHAHEEN. I can answer that in my official capacity and as chairman of the review committee. First of all, the Director of the FBI sent out a directive asking that another thorough search of field office files be engaged in. The Bureau may wish me to defer so they can embellish on my answer. But the answer to your question is that if there are further instances of discovered abuse and harm attendant, it would be my recommendation to the Attorney General, through my committee and the advisory committee, that they be likewise notified.

But we are specifically talking about a program which is specifically characterized and designated in Bureau files with the acronym Cointelpro.

Ms. ABZUG. I want to get this clear. There must be a reason that there was a decision to notify the Cointelpro victims. Those reasons would seem to pertain to persons such as Dr. Martin Luther King who were victims, but such persons will not be notified.

There are American citizen organizations that were victims of FBI break-ins or surreptitious entries, if you prefer. They were not necessarily part of the Cointelpro program and they will not be notified.

Mr. SHAHEEN. I will not agree with that, Ms. Abzug.

Ms. ABZUG. You will not agree with that?

Mr. SHAHEEN. I am not saying they will not be notified, but I am saying that for various reasons they have not been brought to the attention of the Attorney General because they are not ripe for his consideration as to whether they will be notified. They are the subject of reviews and of criminal investigations by the Department.

Ms. ABZUG. Do you have any idea of the numbers of persons beyond the 3,000 that you now say you are planning to notify who could be involved in these other illegal activities?

Mr. SHAHEEN. I have no idea.

Ms. ABZUG. Who does?

Mr. SHAHEEN. Perhaps the Lord.

Mr. DALY. The problem is the retrievability of information from FBI files. Subsequent to the termination of the Cointelpro, in the reviews and canvassing of personnel to try to identify other instances in which Cointelpro-type activities took place, we did discover two separate instances of which we have apprised the Department.

The problem is that there is no retrievable way of getting access to FBI files to identify each and every instance.

Ms. ABZUG. Are you telling me that the FBI does not know when its activities are unauthorized by law and by the Constitution?

Mr. DALY. No. Your question, as I understood it, was: Who can tell you that there were no other counterintelligence-type activities that took place outside of the structured program to which we are referring as Cointelpro? In that regard, my answer to you is that there is a problem of retrievability. The FBI indexes, which are not computerized, give access to files by name, but are not accessible by action.

By that, I mean that there is no magic formula by which you can search FBI indexes, which number over 50 million, and identify a particular reference as being the subject of Cointelpro.

Ms. ABZUG. There have been a lot of break-ins, for example. Have you done anything to determine who committed the break-ins against whom?

Mr. SHAHEEN. That would be inappropriate to respond to, Ms. Abzug. As I indicated twice earlier, they are the subject of departmental investigation at the present time.

Ms. ABZUG. Obviously, there is a whole series of things. On September 23, 1975, the FBI reported at least 14 domestic subversive targets were the subject of at least 230 entries from 1942 to April of 1968. The Bureau also reported that in addition three domestic subversive targets were the subject of numerous entries from October of 1952 to June of 1966.

If that is true, and if, indeed, the Bureau is unable to retrieve an accurate accounting of their number, how did the Bureau arrive at 238?

Mr. DALY. I am not sure how that figure was arrived at. I do know that an inquiry went to the various field offices, going by recollections

of agents or whatever, in an attempt to identify activities that were improper. And what we determined was referred to the Attorney General.

Ms. ABZUG. Ms. Lawton, how do you think this system is going to be executed? If what is being said here is that we know of a certain number of cases in a certain program but we don't know about other activities that were just as illegal in many other places in the agency, what is your view as to how you are going to give people equal opportunity to be notified or equal treatment under the law?

Ms. LAWTON. We will do the best we can. That is all we can do. As the matters come to our attention and as we learn of these matters, we will attempt to review them for a variety of considerations. Among those would be, of course, investigation of the legality of the conduct. In some cases, litigation will identify them in the process of discovery. In other cases, our inquiry will discover information. As it is brought to our attention, we will attempt to deal with it.

Ms. ABZUG. I have a concern about that because I am interested in what the next steps are. You notify an individual about a file. Then, under the regulations, what is anticipated to happen?

Mr. SHAHEEN. They will get everything in the Cointelpro file relating to that individual; they will get the field office recommended action; they will get Bureau headquarters' approval; they will get a copy of the approval; they will get a copy of the field office description of results—whether it was with or without results—with the interests of privacy as to informants preserved and other privacy considerations preserved.

Ms. ABZUG. What will happen if the committee denies an individual his or her entire and complete file? Would that individual, in your opinion, be able to challenge the committee's decision in court under the Privacy or the FOI Act?

Mr. SHAHEEN. Ms. Lawton is my expert on that.

Ms. LAWTON. Yes; certainly.

Ms. ABZUG. Do you have a program planned for the destruction of files?

Ms. LAWTON. We have our existing destruction program; yes.

Ms. ABZUG. There has been a moratorium on these programs. Has it commenced already?

Ms. LAWTON. The moratorium was lifted as to a portion of the destruction program dealing with administrative and certain other files. It remains in effect on different files.

We have had a problem under the Privacy Act, as you know. That act prohibits the maintenance of certain files—it does not automatically require their destruction, but prohibits maintenance by our Department of certain files.

Then we consult with Archives. The option is either to destroy, if Archives permits, or to deliver the files to the Archives.

Ms. ABZUG. Have they actually started the destruction of files?

Ms. LAWTON. No. The moratorium was just lifted a little while ago and the actual destruction has not started. Under the archival program, there is a microfilming process that goes on, but we are talking about destroying originals and duplicates.

Ms. ABZUG. You mean that we can always find a copy? You are going to put all of your files in the Archives—right?

Ms. LAWTON. No.

Ms. ABZUG. A lot of them—right?

Ms. LAWTON. Only what the Archives agrees to take.

Ms. ABZUG. Who makes that decision?

Ms. LAWTON. Archives.

Ms. ABZUG. You are going to offer the Archives a lot of files so you can keep copies of them?

Ms. LAWTON. No, ma'am. Archives works out with agencies record control schedules which set up regular destruction processes and represent categorical judgments by Archives on particular records—that they want them or they do not want them. In those instances, they do not make record-by-record decisions. We destroy by category, with the archival approval.

Where there are areas outside the record control schedule, we take the individual records to the Archives. They make a judgment as to what should be preserved and what should not. What they want is delivered to them; what they say to destroy is destroyed.

Ms. ABZUG. That is fascinating. In view of the testimony that has been given here today, namely, that there are difficulties in retrieving files that may have been maintained illegally, in view of your statement that the FBI is about to recommence its destruction program, and in view of the notification program which now applies to Cointelpro but which it may be important to extend beyond Cointelpro because of the illegalities that were committed in many instances with which the record is replete, are you not suggesting in your testimony that you may just be destroying files which really should be the subject of notification?

What are the safeguards to prevent that?

Ms. LAWTON. The records we are proposing to destroy are not in this area.

Ms. ABZUG. How do you know that? We have just had testimony over here that we do not really know how to determine without full review which files are the subject of illegal activity.

Mr. DALY. Madam Chairwoman, may I answer your question? Cointelpro activities took place out of the Intelligence Division. There are certain classifications which were where the genesis of Cointelpro arose. The documents that are now being scheduled for destruction under the approved archival system include nothing of an intelligence nature.

We are not even destroying duplicates of investigative serials that arose out of intelligence-type investigations.

Ms. ABZUG. May I interrupt you? I need some clarity. Are you talking about 10-year-old criminal files that are going to be destroyed?

Mr. DALY. Yes.

Ms. ABZUG. But I want to know what guarantee the citizens in this country have or what understanding this committee can secure as to what steps can be taken to prevent the destruction of files which might become the subject of notice programs.

Mr. DALY. The only assurance I can give you of that, outside of our institutional statement of that, is that the Church committee and the Pike committee have had access to Bureau documents and have had access to Bureau files. We wrote to Senator Church and asked for approval for the resumption of the Bureau file destruction program.

That was with one exception, and that being the destruction of duplicate serials of intelligence material, which is approved under the existing authority.

With the approval of Senator Church, Senators Mansfield and Scott, and the Attorney General, and a letter from Chairman Rodino of the Judiciary Committee, we have resumed the destruction program.

Ms. ABZUG. Well, I think Mr. Rodino and Mr. Church and Mr. Mansfield and Mr. Scott ought to just take over the whole Government.

Mr. DALY. You asked what outside assurances there were, Madam Chairwoman.

Ms. ABZUG. I know, but there are other committees of the Congress that are functioning in order to fulfill their responsibilities. And I am not convinced that the notification by the Attorney General to those whom you have mentioned is a sufficient justification for carrying out a destruction program.

I mean this to be very clearly stated on the record. There are serious investigations taking place. Democracy has been totally distorted by the illegal operations of these agencies of the executive branch of Government. We have not yet straightened it out. We do not have any confidence in Government to this day. The people who are voting are people who are against Government or against Washington.

And you people are part of the problem. It is not your fault that the Attorney General is not prepared to come here and take his medicine and discuss it with this committee You people are his surrogates.

I hope he will hear about this, and I am sure he will. But the fact is that just because the Attorney General made a decision that he is going to resume a program of destruction does not mean that he may not be in violation of the law. And the obligation of this committee and other committees like this is to fulfill the responsibilities of Government. And until there are hearings by committees that have ongoing responsibility under the Privacy Act and the Freedom of Information Act, I think this is a fairly lawless way to proceed and another arbitrary way to proceed. These are the kinds of methods that have gotten us into the trouble we have just gotten into.

With all due respect—and I have a great deal of respect—for the select committees that function in the House and the Senate and with all due respect to the individuals named as having been notified, they do not have the responsibility for privacy and freedom of information that this committee and other committees have.

Mr. SHAHEEN. Ms. Abzug, presumably, as officers of the House and Senate——

Ms. ABZUG. I received a letter from the Attorney General notifying me that he would like to resume the destruction of files. I replied to him that I thought it was premature and that I would like to have him come before this committee to discuss it.

And you are now telling me that he has resumed it and he has sent you to tell me that he has done so. I think that is the kind of arrogance of Government that we have had too much of.

Ms. LAWTON. I think there may be some mistake about what is being destroyed.

Ms. ABZUG. I hope there is.

Ms. LAWTON. We have outlined on pages 11 and 12 of the prepared statement the kinds of materials we are talking about—administrative files dealing with attendance records of employees, auto accident reports, travel requisitions, and this sort of thing. And we are talking about criminal investigative files over 10 years old and property cases. We are not talking about intelligence operations.

Ms. ABZUG. I would be extremely reassured if all of you could make a statement to me that indeed these files do not contain any of the information that we are interested in finding out about or that individuals are entitled to get direct notification of—namely, illegal activities and invasions of constitutional rights.

And in order to find that out, I would like to have the GAO ascertain whether indeed this is what is being destroyed.

We have to have some checks in government. One of the things we got into trouble with is that we have no checks. The executive branch became a runaway government unto itself, and its agencies functioned that way. That is what all of this has been about until now. How do we get proof that that is not continuing?

I am going to make a request that the GAO examine the records that you are planning to destroy and make a report to this committee. I don't know whether any of you want to say anything on that subject, but wouldn't you think that would be a good idea so that we can restore confidence in government?

It seems to me that you have not been too interested in having the GAO audit your activities.

Ms. LAWTON. The GAO is constantly auditing our activities.

Ms. ABZUG. Who is here from the FBI?

Mr. DALY. I am.

Ms. ABZUG. Am I wrong?

Mr. DALY. The GAO conducted an audit at the request of Chairman Rodino, and which we complied with. I understand there has been a subsequent request, but I have not been privy to the discussions concerning it. I understand there have been meetings concerning that.

Ms. ABZUG. Do you know of your knowledge that you allowed the GAO to look at the files, or do you just supply summaries to the GAO?

Mr. DALY. I was not directly involved in the review, but it is my understanding that summaries were prepared.

Ms. ABZUG. That is not exactly an audit.

This is the same thing that I was talking about before. The outfit that commits the crime is permitted to determine the nature of its audit. It provides the evidence without allowing an audit to take place. Does that not strike you as being strange?

Mr. DALY. I cannot comment on that. That was a decision. There were discussions with GAO on that matter, Madam Chairwoman. I know, to the best of my recollection, what the procedure was. But as to the decision and the judgment as to the way the GAO audit went forward, I was not privy to those discussions.

Ms. ABZUG. Is there any reason why an agency of Government would not be willing to allow a perfectly legitimately authorized auditing authority such as the GAO to look at its records?

Mr. DALY. This matter is under discussion between the Attorney General and Mr. Staats and others. I would rather not comment on that.

Ms. ABZUG. That is fair enough.

Do you have questions, Mr. Harrington?

Mr. HARRINGTON. Most of you were here earlier this morning when we had an exchange with Mr. Bush who was perhaps, compared to the people who are before me, more of an appropriate subject for the concern to be expressed. Ms. Abzug has touched on it briefly as well.

You people, with vested interests aside, puzzle me to the degree that I still do not find myself reassured, despite Mr. Levi's protestations. There is an unwillingness to deal with the reality of where the country has gone when it comes to the profound distrust of the institution called government.

To pursue that last comment of Chairwoman Abzug's, do you really think that self-induced examination is going to be sufficient to deal with the profound cynicism that exists toward us today—whether they be sanitized files or summarizations?

I am not questioning honesty or integrity; I am questioning the reality to which we have been exposed when it comes to a measure of it. We have nonparticipation in the process; we have cynicism toward anyone who bears an incumbency when it comes to seeking elective office.

Do you really think that you are going to have a credible operation if you engage in this self-examination of burglaries and wiretappings and other activities? Should there not be something by way of a third-party standard that you can repair to that will at least begin to deal with that reality that intrudes once in a while outside of the 10 square miles that we occupy?

And I do expect you to go on the record on this. I know that you are agents for and cannot speak with authoritative position for the Executive. But I think we are as culpable for engaging in this kind of exchange that goes nowhere as anyone. I find this kind of exchange most frustrating. But does it make any sense to just exchange these kinds of reassurances?

Ms. LAWTON. I think we are doing more than that, Mr. Harrington.

Mr. HARRINGTON. What are you doing?

Ms. LAWTON. I think that is why the Department originally publicized to the American people the existence of the Cointelpro. I think that is why the Attorney General, among other reasons, is undertaking this notification program. It is in order to get across to the citizens that we are attempting to repair the past. I think that is what it is all about.

Mr. HARRINGTON. And that, in your mind, is adequate—given the period from the early 1960's to the present—to repair the damage done collectively to the institutional framework and setting we operate in?

Ms. LAWTON. Oh, no; I am not saying it is adequate.

Mr. HARRINGTON. Where are we? We have had an examination of the conduct of the former head of the CIA, who sits as Ambassador to Iran, over the last year. We bear coresponsibility for that. We can use the impeachment process.

But when does something happen? I am not looking for blood. I am just looking for something that approaches a recognition of where people are at toward their Government today. And to engage in this somewhat civilized dialog about what you are doing and about what our concerns are, does that get to that?

Ms. LAWTON. It is a start. And that is all we can say.

Mr. HARRINGTON. What about the need for a continued prosecutorial office of the kind that gave assurances in the spring of 1973 that it would be responsive to the other branch of Government in the conduct of its affairs and would not be subject only to the whim of the Executive or the appointing authority? Is that desirable, as a matter of policy, to assure people that there is going to be some record of objectivity?

Ms. LAWTON. It is a matter on which, as far as I know, the position of the Department has yet to be communicated. We have legislation to that effect, on which reports are being prepared.

Mr. HARRINGTON. A year ago I squawked publicly about the at least theoretical overseer on the part of the Congress of the Central Intelligence Agency, saying, in effect, that the Speaker not only was doing a disservice to himself and to us, but was perpetrating a sham on the American public by putting that person in charge of that investigation. How is it really different to have you people engaging in this kind of self-introspection?

And I am not saying that you are culpable of any crime. I am just suggesting that I think it is an impossible standard to repair to. How do any of us, on your side or on this side, really stand back with a requisite detachment to engage in an examination and satisfy people that have been delivered up to a war they didn't want and with an economy in shambles and who are disillusioned about the prospect of what this country offers, and offer that to them as the answer to a question?

And I am asking that of intelligent people. I know the standards that you people have to meet to attain your present roles. I have a great deal of respect for it. But I also do not sense that there is enough of a sense of urgency about what we have been delivered to as a people. And I expect you people to see that and to face it once in awhile and to speak out and not become the nameless kind of performers that may be all adequate and narrowly slotted, but not broadly construed when it comes to collectively having a piece of what this country has become.

Is it adequate to say that you have examined yourselves, and that that is enough, and that nobody should say another word? Are you going to march lockstep in the direction of whoever the Director of the Agency happens to be?

It is like this discussion this morning about the Rockefeller Commission. You know who was in the Rockefeller Commission last year—the old boy network.

We have a new basic structure now to oversee the Intelligence Committee. Who are they? Former members of it and the former head of the Army. It is like calling together the alumni association, as I said.

Is that going to be adequate to tell people who are cynical that you really are doing the job? I am asking you as individuals, not as numbers and not as titles.

Ms. LAWTON. I think the total constitutional process that has been working for the last 200 years, that slips, unquestionably, and that has problems, unquestionably, does provide checks and balances for this.

Mr. HARRINGTON. I suspect that there are a lot of people out there who are saying that they have long since given up hope that it works well enough.

And I expect, frankly, more of a collective degree of intelligence than I sense I am getting. I understand all of the constraints. But once in a while, I expect people—whether it is the kind of these struck in a book last year about resignation in protest—to stand up and say it is inadequate, and to say that more should be done, instead of being able to define that in a way reminiscent of some of the defenses of World War II about where responsibility ends.

Ms. ABZUG. Thank you.

Do the Cointelpro files on American citizens indicate what dissemination has been made to other agencies?

Mr. DALY. The Cointelpro files will show what actions were taken. If the actions in question involve dissemination of information outside the FBI, it will be disclosed therein.

Ms. ABZUG. And when there is notification, will the notification program include telling the individual what other agencies were given this improperly gathered information?

Mr. DALY. He will get all of the information necessary that shows the impropriety of the action and the harm.

Ms. ABZUG. How about dissemination?

Mr. DALY. That would include the dissemination.

Ms. ABZUG. Does the program contemplate doing anything about a corresponding response? In other words, if a person says, "I want my file," are you going to give that person the file once you have notified him?

Mr. DALY. We are going to give them information from the file in Cointelpro, as I described earlier.

Ms. ABZUG. How does the individual get the files in all of the other places?

Mr. DALY. FOIA requests.

Ms. ABZUG. He would have to make a separate request. You are not going to get it for him?

You had the file and you made copies of it and you sent it around to the world. Shouldn't you get it for him?

Ms. LAWTON. They are separate files.

Ms. ABZUG. I know. In other words, you are not going to get into that aspect of it. Is that right?

Ms. LAWTON. We are not going to change the existing FOIA-privacy process. As to other matters, no.

Ms. ABZUG. Is there a formal or informal friendly journalists file on something comparable to it?

Mr. DALY. Not that I am aware of; no.

Ms. ABZUG. What is your guess as to how many files, outside of the 3,000, may exist that people might receive notification of since they were files that were illegally obtained? Do you have any idea—any of you?

Mr. SHAHEEN. I have no idea.

Ms. ABZUG. I have a problem. In the Socialist Workers Party case, as I recall it, the FBI committed at least 92 surreptitious entries against the organization between 1960 and 1966. That number might be even higher.

Is there not a process for surreptitious entries? Does not somebody have to approve it?

Mr. SHAHEEN. I do not think it would be appropriate to answer that question, Ms. Abzug, because we are currently engaged in litigation in that, I believe.

Ms. ABZUG. You are?

Mr. GOLDBLOOM. Yes.

Ms. ABZUG. Are we now to the point that congressional committees cannot get any information about government? You could go to court on every issue we want to inquire into.

I direct you to answer the question.

Mr. SHAHEEN. What was the question again?

Ms. ABZUG. Isn't there somebody in charge who knows how many surreptitious entries have been made or who had to approve them?

Mr. DALY. As I recall the testimony before the Church committee—and I believe Mr. McDermott may have appeared before you—the system of approval is a "Do Not File" system. And that is the extent of my knowledge of the operation of that type of program.

Ms. ABZUG. Who approved the burglaries?

Mr. MARTIN. We have no knowledge of that, Madam Chairwoman.

Ms. ABZUG. Do you want to go down the line? Do you know?

Ms. LAWTON. No.

Ms. ABZUG. Do you?

Mr. GOLDBLOOM. No; I don't.

Ms. ABZUG. Do you?

Mr. MARTIN. No.

Ms. ABZUG. Do you?

Mr. SHAHEEN. No.

Ms. ABZUG. Do you?

Mr. DALY. No; I do not.

Mr. GOLDBLOOM. I assume the files would show information concerning the activity.

Ms. ABZUG. If the FOIA and the Privacy Act do not cover the State and local police as to whether Cointelpro files were given to police departments, how could an individual correct that dissemination of improperly gathered information?

Does anybody know?

Ms. LAWTON. It would depend in part on the State law, I suppose.

Ms. ABZUG. Unfortunately, we have to go to vote.

We will adjourn this hearing, subject to recall on another occasion, since Mr. Conyers wanted to ask some questions.

We are going to adjourn this hearing, subject to recall. Also, I ask unanimous consent that the staff be permitted to ask questions in writing as to how this program will operate and to ask other questions that we are very concerned with in the development of the notification program, as well as further legislation on this question.

Thank you for coming. The subcommittee is now adjourned.

[Ms. Lawton's prepared statement follows:]

PREPARED STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Madam Chairwoman and Members of the Subcommittee:

We appreciate the opportunity to testify before the Government Information and Individual Rights Subcommittee of the Committee on Government Operations. In response to your letter, our testimony today is addressed to three distinct and separable subjects. The first part of our testimony analyzes amendments to the Privacy Act contained in H.R. 12039 and H.R. 169. We oppose those amendments because they exacerbate the interpretative problems which already exist in the Privacy Act, conflict with existing law, and pose serious problems for effective law enforcement and the protection of national security. In the second part of our testimony, we focus on the resumption of the FBI destruction of records program. This program under the Archives' records control schedule will allow for continued preservation of all files relating to domestic security, racial matters, extremist matters, counterintelligence and foreign intelligence. Finally, the third part of our testimony describes the voluntary notification program which the Attorney General has instituted with respect to victims of improper COINTELPRO activities who may have suffered injury.

I.

Since H.R. 12039 encompasses the provisions of H.R. 169, we will confine our comments to the more recently introduced bill.

H.R. 12039 would amend the Privacy Act in several respects. It would revise 5 U.S.C. 552a (d)(2)(B)(ii) to specify that an individual may request not only the correction of records but expungement, updating or supplementation when the individual believes the records are not "accurate, relevant, legally maintained, timely and complete." It would add new provisions requiring agencies to notify "persons" (as distinguished from "individuals") concerning unconsented interception or examination of communications or searches, and would require notice to persons who are the subjects of files compiled in the course of three programs - CHAOS, COINTELPRO, and the Internal Revenue Service "Special Service Staff" programs. Persons notified would have the option of "requiring" that agencies destroy the files. The bill would also eliminate the express authority of the CIA and Secret Service to exempt some of their records from certain provisions of the Privacy Act.

We have serious difficulties with the provisions of H.R. 12039 particularly in their intended relationship to existing law.

The amendment to the correction provision of the Privacy Act not only retains the uncertainty of existing law but increases it. The Privacy Act now authorizes individuals to seek correction of agency records which the individual believes are not "accurate, relevant, timely or complete" and it does so without exception or without definition of the operative terms. Literally it could be read to authorize requests to alter sworn statements, official transcripts or accurately recorded statements of third-party opinion and to require that closed files of historic interest be reopened to add new material unrelated to the original subject matter. By revising the provision to refer not only to correction but also to expungement, updating or supplementation - without defining the intent of these concepts or the original language - the interpretive problems are exacerbated.

Is it intended, for example, that I be allowed to demand expungement of any unfavorable comments of third parties in my background investigation file or seek to "update" last year's performance rating by substituting this year's? Could an equal employment opportunity complainant "supplement" an affidavit filed earlier substantially altering its content? These questions have already arisen under the existing law and the bill does not resolve them.

As you know, we have taken the position that the correction provision of the Privacy Act encompasses the right to seek expungement in appropriate cases. Our primary concern is that neither the present Act nor its proposed amendment suggests what are - or are not - appropriate cases.

The notification provisions of H.R. 12039, in our view, sweep too broadly and conflict with existing law without addressing such conflicts. Moreover, they pose serious problems for effective law enforcement and the protection of national security.

Proposed paragraph (e)(12)(A) would require notice to both sender and receiver of wire communications that have been intercepted without a warrant or without the consent of both parties to the communication. The requirement is inconsistent with provisions of 18 U.S.C. 2510 et seq. which exclude interception with one-party consent from the warrant provisions, permit emergency interception on a limited basis without warrant, and provide discretion to the court to alter the notification requirements related to interception. For example, the provision would appear to require notice to a kidnapper that his ransom demands on his victims had been taped with the victim's consent.

Coupled with the destruction provision, the bill could even be read to authorize a defendant to "require" that the tapes be destroyed prior to his kidnapping trial. The Title 18 provisions on interception were designed to avoid such problems. H.R. 12039 would appear to amend Title 18 without any direct reference to it.

We might also note that the bill's sweeping provision on interception could be read to require the Federal Communications Commission to provide notice of radio monitoring under the Communications Act, 47 U.S.C. 605, yet it makes no reference to that Act or its intended relationship to the proposed Privacy Act amendments.

The provision refers to the "examination" of various types of communications, including written communications, and requires notification whenever there is neither a warrant nor both-party consent. It is not clear whether this language is intended to encompass "mail covers" or customs examinations for contraband for which no warrant is legally required. The "examination" language also raises the question whether law enforcement authorities examining threatening or extortionate communications turned over by the intended victim would be required to notify the potential defendant and even destroy the evidence at his request.

The provision requires notice to the occupant, resident or owner of premises or vehicles searched without a warrant or without consent. It is not clear whether actual notice to any one of the three, present at the time of the search, is sufficient or whether separate notice to any or all of these is required. Many warrantless vehicle searches will involve occupied vehicles and the occupant will, therefore, already have actual notice of the search. Cf. Carroll v. United States, 267 U.S. 123 (1925). Similarly, warrantless searches contemporaneous with arrest, by their very nature, will involve actual notice to an occupant of the premises. Cf. Chimel v. California, 395 U.S. 752 (1969). Is it contemplated that subsequent notice must be given as well? Must owners or residents, not present at the time of the search, be separately notified? The bill is unclear in this respect.

Even more serious than the law enforcement problems posed by the bill are the problems created in the counterintelligence field. Notice to foreign agents engaged in espionage that their identity or operations have been determined by means of interceptions would effectively paralyze the counterintelligence efforts of this country. The bill even goes so far as to substitute the word "person" for the word "individual," now used and defined in the

Privacy Act, suggesting that notice would be required to be given to foreign nationals as well as U.S. citizens. It might even be read to authorize foreign nationals to "require" the destruction of the information obtained. As the Attorney General has made clear in his testimony on national security wiretap legislation, we are not opposed to judicial review of national security interceptions but we consider notice provisions, such as this, totally inconsistent with national security.

Finally, we note that proposed paragraph (12) would require agencies to advise persons of their rights under the Freedom of Information Act and provide such persons with the option of "requiring" that agencies destroy the file. Aside from the problems already alluded to, this provision fails to address the relationship between its apparent destruction requirement and the record-keeping requirements of the Federal Records provisions, 44 U.S.C. 2103, 3301 or 18 U.S.C. 2518(8). Nor does it make exception for files which may be the subject of pending litigation. Certainly, files relating to litigation should not be destroyed until the case is resolved and we question whether individuals should have a personal right to override the historic records requirements or judicial supervision of electronic interception requirements of existing law. As recent experience

indicates, such a destruction requirement may also be inconsistent with congressional interest in the preservation of certain files.

The notification provisions relating to COINTELPRO, involve somewhat different considerations. We will confine our comments to COINTELPRO itself, deferring to the CIA and Internal Revenue Service with respect to the other programs.

The term COINTELPRO is a generic term used to describe a number of separate and distinct programs of activities directed at groups or individuals, which the FBI implemented during the period 1956 to 1971. Six of these programs were directed at domestic based groups and individuals; the others are in the area of foreign counterintelligence. Some of the domestic based programs included activities which were clearly proper, for example, advising local, state and federal authorities of civil and criminal violations by group members. At the other end of the scale are activities such as informing family members of an individual's immoral activities. In some instances improper activities were undertaken but no injury to the individual resulted as, for example, when an employer was advised of information concerning an employee of which he was already aware or on which he took no action. As you are aware, we have already undertaken notification of individuals who suffered injury

as a result of improper COINTELPRO activity. On the other hand, where the COINTELPRO activities were proper or no injury occurred, notification would be inappropriate and of no practical utility to anyone. In addition, notification of thousands of COINTELPRO subjects would involve enormous practical problems, including possible further invasion of the privacy of the individuals concerned.

The question whether individuals receiving notice should be permitted to request or "require" destruction of records presents somewhat different issues which must be resolved on a case-by-case basis. We have taken the position that the Privacy Act in its present form permits individuals to request disposal of records which an agency may not properly maintain under the terms of the Act. It is important, however, to make the distinction between destruction of records and the Privacy Act's prohibitions on agency maintenance of records. H.R. 12039 appears to authorize destruction, at individual request, regardless of the nature of the records involved. As we read the Privacy Act, it prohibits agency maintenance of certain records but permits the Archives to maintain those portions of the records it finds to be of historic significance. 5 U.S.C. 552a(l). Our experience indicates that the Archives is primarily interested in preserving the historic

fact of agency action, proper or improper, but is willing to permit destruction of personal data acquired in the course of agency action.

Notification and possible destruction of information relating to COINTELPRO, in our judgment, requires these fine distinctions as well as consideration of such matters as the preservation of documents relating to litigation. Likewise we have had in recent years the added consideration of congressional requests for the preservation of such documents. All of these complexities suggest the need for case-by-case review of issues such as notification and destruction rather than a sweeping legislative approach. We suggest that our announced COINTELPRO notification program offers a better approach than H.R. 12039.

II.

The second subject we have been asked to discuss is the resumption of the FBI's records disposal program. As you are aware, the Senate leadership and the Senate Select Committee have advised the Attorney General that they have no objection to the resumption of this program.

The records disposal program to be resumed involves only those records approved for destruction by the National Archives and Records Service under the established Records

Control Schedule. These include certain administrative records and identification records no longer needed; records of criminal cases in which there has been no prosecution authorized, no investigation because of a lack of federal jurisdiction or an unsubstantiated allegation, or property cases in which no suspect has been identified; original records of criminal cases which have been closed for ten years, which have been microfilmed; and records of field office criminal cases which have been closed and of which summaries are maintained at Headquarters.

In an abundance of caution, FBI Headquarters halted all files destruction in response to the request of the Senate leadership in January 1975. While the standard microfilming process continued on closed files relating to criminal cases involving stolen motor vehicles, interstate transportation of stolen property and similar property matters, the originals of the documents were preserved as well. There are presently 2400 files drawers full of these original files being preserved even though the cases have been closed for 10 years. Similarly, the FBI is currently retaining 105 six-draw file cabinets full of criminal matters involving unsubstantiated charges or allegations outside federal jurisdiction, all over ten years old. Innumerable administrative

files relating to time and attendance records, auto accident reports, personnel transfers, travel requisitions, applicant files, tour arrangements, etc. are being maintained long beyond their normal destruction period. It is of these files which we propose to resume normal destruction in order to alleviate the space and manpower burdens of retaining them.

Under the Archives Records Control Schedule, files relating to domestic security, racial matters, extremist matters, counterintelligence and foreign intelligence are to be maintained indefinitely. The Control Schedule is, of course, binding on the Department and there is no intent to undertake routine destruction of such files. Even with respect to the criminal files subject to destruction under the Control Schedule, microfilm copies would remain available indefinitely. The resumption of the destruction program would merely serve to reduce the storage burdens of a large volume of original and duplicate records, it would not eliminate any records of FBI activity which may be of interest to historians, the courts, the Congress or the public generally.

III.

Before discussing our COINTELPRO notification program, a brief background may be helpful.

The several programs carried out by the FBI and described by the term COINTELPRO were the subject of successful Freedom of Information Act requests, by journalists and individuals affected by COINTELPRO, prior to Attorney General Saxbe's public description of the programs. After the Department's release of its report on COINTELPRO additional FOI requests for this material were received. Approximately 60 to 70 such requests have been or are being processed and others may be included within the FOI backlog of 6,000 requests.

To the best of our knowledge there has not been a class action suit filed on behalf of all those who may have been the victims of COINTELPRO activities. However, the complaints in a number of suits against the government include allegations of harm from specific actions which may be related to COINTELPRO. Muhammad Kenyatta, et al. v. Clarence M. Kelley, Civ. No. 71-2595 (E.D. Pa.); Emily Harris, et al. v. Charles W. Bates, et al., Civ. No. CV-760034-ALS (C.D. Cal.); Peter Bohmer, et al. v. Richard M. Nixon, et al., Civ. No. 75-4-T (S.D. Cal.); Institute for Policy Studies, et al. v. John N. Mitchell, et al., Civ. No. 74-316 (E.S.D.C. D.C.); Abdeen M. Jabara v. L. Patrick Gray, III, et al., Civ. No. 39065 (E.D. Mich.); Socialist Workers Party, et al. v. Attorney General, et al., 73 Civ. 3160 (S.D.N.Y.); American

Civil Liberties Union, et al. v. City of Chicago, et al., No. 75 C 3295; Richard Dhoruba Moore v. Edward Levi, et al., Civ. No. 75-C-6203 (S.D.N.Y.); Jane Fonda v. L. Patrick Gray, et al., Civ. No. 73-2442-MML; Charles Koen v. Estate of J. Edgar Hoover, et al., No. 75-2076 (D. D.C.).

The revelations concerning COINTELPRO raised serious questions concerning what obligation the Justice Department might have to individuals injured by COINTELPRO activities. It is apparent that some of these activities may have been improper or illegal. A number of them may have resulted in injuries to individuals, including possible economic damage or harm to personal reputations. However, due to the covert nature of these activities, many of those affected by arguably improper actions might still be unaware that such actions were taken and are thereby unable to seek whatever remedy might be appropriate.

After a number of preliminary discussions, the Attorney General asked Rex E. Lee, Assistant Attorney General, Civil Division, to prepare a recommendation with respect to an appropriate Justice Department response to this problem. Early in this year, Mr. Lee recommended that the Justice Department initiate a notification program with respect to individuals who were the subjects of improper COINTELPRO activities. After further discussions and review of the scope

and nature of the problem, the Attorney General announced on April 1 that he had established a special review committee to notify individuals who may have been personally harmed by improper COINTELPRO activities, that they were the subjects of such activities, and to advise them that they may seek further information from the Department as they wish.

The process of reviewing COINTELPRO files in preparation of notification is already under way. Actual notification can be expected to begin within 60 days. Notification will be made in all those instances where the following criteria are met: (1) the specific COINTELPRO activity was improper, (2) actual harm may have occurred, and (3) the subjects are not already aware that they were the targets of COINTELPRO activities. A special concern of the notification committee is that no rights to privacy be infringed by the notification process and specific procedures to implement this concern are still being developed. Those notified pursuant to this program will be directed to contact a special office established to process any requests for further information on a priority basis. Notification decisions under these criteria will be made by the special review committee which has been set up under the Office of Professional Responsibility with the assistance, where

required, of a special advisory committee made up of two Assistant Attorney Generals and the Legal Counsel of the FBI.

IV.

We hope, Madam Chairwoman, that we have addressed, at least in summary fashion, the subjects listed in your April 2 letter concerning these hearings. We will be happy to respond to any questions the Subcommittee may have.

[Whereupon, at 1:25 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

NOTIFICATION TO VICTIMS OF IMPROPER INTELLIGENCE AGENCY ACTIVITIES

TUESDAY, MAY 11, 1976

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2247, Rayburn House Office Building, Hon. Bella S. Abzug (chairwoman of the subcommittee) presiding.

Present: Representatives Bella S. Abzug and Michael Harrington.

Also present: Timothy Ingram, staff director; Eric L. Hirschhorn, counsel; Robert S. Fink, professional staff member; William G. Florence, professional staff member; Theodore J. Jacobs, professional staff member; Ruth Matthews, professional staff member; and Anita Wiesman, clerk.

Ms. ABZUG. The hearing is called to order.

The subcommittee today holds its second day of hearings on H.R. 12039, H.R. 13192, and H.R. 169, which would require that all who were subjects of improper or illegal intelligence agency activity be given notice that they were targets of their Government. The bill also requires that these individuals, who were doing nothing more than exercising their constitutional rights, be informed of their rights to obtain their files under the Freedom of Information Act and to have improper portions expunged under the Privacy Act.

Related to the question of notice is the expressed desire of several agencies, including the Internal Revenue Service, to destroy certain files and records which were gathered improperly. At our last hearing, CIA Director George Bush indicated that the CIA would like to destroy its Chaos files; the Defense Department claims to have destroyed its files on surveillance of civilians; the FBI is apparently about to resume its routine program of destruction of files; and today Commissioner of Internal Revenue Donald Alexander will presumably reiterate his view that the "Special Service Staff" files of IRS should be destroyed.

There are arguments on both sides of the question of whether these files should be destroyed, but I can see no valid reason to fail to first give notice to the individuals who were the subjects of these files and allow them to know that their Government was illegally collecting files on them. Second, I believe that individuals should have something to say in the ultimate disposition of the materials that their Government holds on them.

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The bills before us today would require, among other things, that every person who was the subject of a "Special Service Staff" file created by the Internal Revenue Service be given notice of the fact that such a file on them exists. The "Special Service Staff" of IRS was created in 1969 and focused on what it viewed to be "extremist, ideological, militant, subversive, radical," and similar organizations and individuals.

Until 1973, when it was terminated, the SSS operated as a political surveillance unit, collecting over 8,500 files on individuals and over 2,800 files on organizations. It opened files on people suggested by the White House, the FBI, and the Internal Security Division of the Justice Department. The SSS generally operated by receiving information from these and other agencies, including local police units, establishing files on the individuals and organizations which interested them, and referring cases to IRS field offices for audit or collection.

The Justice Department has instituted a very limited program of notice to the victims of the FBI's counterintelligence program. While the Justice Department's notice effort is narrow, to be sure, it is a useful precedent which we suggest to the Internal Revenue Service and to the Department of Defense and others on their programs which come within the purview of our bill.

As to the Defense Department, we are interested in knowing whether one of Defense's components, the National Security Agency, intends to inform the individuals whose international cable traffic was intercepted by NSA during a period of 30 years.

Again, we think individuals have a right to know when their Government interferes with their private communications. We are not averse to taking into account legitimate national defense considerations in giving notice to the people who were subjected to this kind of surveillance. On the basis of other hearings and investigations conducted by this subcommittee, though, we are certain that the vast majority of those whose messages were intercepted were ordinary Americans completely remote from any defense or national security matters. Surely, these people are entitled to know about the files the Government gathered on their everyday activities. We will discuss these matters with our Defense Department witness.

Our first witness will be the Commissioner of Internal Revenue, Donald Alexander.

Commissioner, are you accompanied by anyone today?

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE; ACCOMPANIED BY JAMES KEIGHTLEY, DIRECTOR, DISCLOSURE DIVISION, OFFICE OF THE CHIEF COUNSEL; ROBERT TERRY, ASSISTANT COMMISSIONER, ACTS; CHARLES SAUNDERS, DEPUTY CHIEF COUNSEL; CHARLES GIBB, CHIEF, DISCLOSURE STAFF; ROBERT KUEHLING, MANAGEMENT ANALYST, ACTS; AND ROBERT A. HUDGINS, ACTING STAFF ASSISTANT, ACTS

Mr. ALEXANDER. Yes; I am, Madam Chairwoman. I would like to introduce those at the table with me. On my immediate left is Mr. James Keightley, Director of our Disclosure Division, in the Office

of the Chief Counsel of the IRS. To my immediate right is Mr. Robert Terry, who is our Assistant Commissioner for Accounts, Collections, and Taxpayer Service.

There are others with us, Madam Chairwoman.

Ms. ABZUG. Mr. Commissioner, I would like to know which of the persons accompanying you will be testifying today.

Mr. ALEXANDER. I think both Mr. Keightley and Mr. Terry will. Mr. Charles Saunders, who is the Deputy Chief Counsel, may be testifying in response to specific questions which the subcommittee may have. Mr. Charles Gibb, the director of our disclosure staff, is also here; as is Mr. Robert Kuehling who worked with the Special Service Staff when it was in existence. He may be the best person to answer specific questions relating to the staff.

Also, Mr. Robert A. Hudgins is here. He is Mr. Terry's assistant.

We have brought a lot of people because you may have a number of specific questions. We want to be able to respond to them today, as best we can, rather than to say that we will look it up and get an answer back to you for the record.

Ms. ABZUG. You may proceed.

Mr. ALEXANDER. I have a statement, Madam Chairwoman. With your permission, I do not propose to read it, but I would like to request that it be inserted into the record.

Ms. ABZUG. Without objection, it is so ordered.

[See p. 120.]

Ms. ABZUG. Would all of you stand, please, and be sworn in.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ALEXANDER. I do.

Mr. KEIGHTLEY. I do.

Mr. TERRY. I do.

Mr. SAUNDERS. I do.

Mr. GIBB. I do.

Mr. KUEHLING. I do.

Mr. HUDGINS. I do.

Mr. ALEXANDER. Madam Chairwoman, as you will recall, we discussed the Special Service Staff and other problem areas in intelligence gathering by the Internal Revenue Service on March 13, 1975, when the Internal Revenue Service last testified before your subcommittee.

Much has happened since March 13, 1975. The Internal Revenue Service and I have not gone unnoticed by the press, as I am sure you are aware. Also, the Internal Revenue Service has made great strides in devising and implementing programs designed to insure that we collect only the information necessary to our job of administering and enforcing the tax laws.

Ms. ABZUG. When you were here in March, by the way, you said that one of the chief concerns of the Internal Revenue Service is the potential use of the Privacy Act in cases of substantive tax disputes. Has this fear proved to be justified?

Mr. ALEXANDER. I think we still have that fear. I am going to ask Mr. Saunders or Mr. Keightley to answer whether people have attempted to use the Privacy Act as an alternative method in litigating tax disputes.

Mr. KEIGHTLEY. I would have to say that our experience with the Privacy Act has indicated that we have not had people indicating an attempt to amend their returns or tax records based upon the Privacy Act. The jurisdictional grant, as you are aware, of the Privacy Act is very broad. Our basis for our comment was the initial analysis of the act. We have put into our regulations an indication to the people who may want to avail themselves of the Privacy Act that we feel that the proper source of appeal and correction of tax records or returns or refunds are the normal tax procedures—a refund claim or a petition to the Tax Court, if that is the proper route.

Ms. ABZUG. At the same hearing, there was a good deal of testimony on the intelligence gathering and retrieval system. I think you testified that system was canceled, but the files containing the data accumulated under that system remain in place. What use has been made since that time of these intelligence files?

Mr. ALEXANDER. First, that system was a system of retreiving and storing data. I believe that our check showed that there were about 465,440 names in that system. But I am not sure I can answer your question specifically because I would be quite surprised if, with respect to certain of these people, there were not investigative actions of various kinds. We conduct more than 2 million collection actions each year, and almost 2 million audits of individuals each year.

I do not think this class is immune; but I cannot tell you whether any use was made of any of the information that was stored in that system in any of these investigations.

Do you know, Mr. Gibb?

Mr. GIBB. No; I really cannot tell you.

Mr. ALEXANDER. So that is one that I cannot answer. I will do my best to try to find the answer for you.

[The material follows:]

SPECIAL SERVICE STAFF FILES

With respect to the files of the Special Service Staff, no use has been made of them since that activity was abolished on August 13, 1973. Disclosure of information contained in these files may be made to the Department of Justice in connection with actual or potential litigation. Access to the files is limited to Congressional Committees and individuals making Freedom of Information requests pertaining to themselves. The files are physically located in the same place where they were on the date the Special Service Staff activity was terminated.

Attached is a copy of the Privacy Act notice relating to this system of records as published in the Federal Register, Vol. 40, No. 166, Tuesday, August 26, 1975.

INFORMATION GATHERING AND RETRIEVAL SYSTEM

The disposition of the Information Gathering and Retrieval System (IGRS), which was suspended on January 22, 1975, and subsequently discontinued, is prescribed by the Information Gathering Guidelines (MS 93G–152), dated June 23, 1975. *Section 3. Record Retention and Destruction* provides as follows:

> .01 No information documents of any type presently on hand or hereafter acquired in the Service concerning Intelligence Information Gathering, Joint Compliance Program, Coordinated Compliance Projects and Returns Compliance Program will be destroyed until the Senate Select Committee and all other official reviewing bodies complete their investigation of intelligence activities carried out by or on behalf of the Federal Government. The suspension of destruction procedures does not preclude use of such information for civil or criminal tax administration purposes, provided such use does not include destruction. Instructions concerning records disposition will be issued as soon as the investigations are completed.

.02 District Directors will ensure that documents and information relating to or arising from information gathering activities (including projects and programs), whether solicited or unsolicited, which are not necessary to the administration of the tax laws and do not indicate a violation of a Federal law enforced by another agency will be segregated and placed in a separate storage area with access limited to Division Chiefs. To the extent practicable, the data should be filed according to taxpayer name. An index of all documents from the discontinued Information Gathering and Retrieval System should be retained. These records may be transmitted to the Federal Records Center, or destroyed in accordance with IRM 1(15)59, when the Congressional investigations specified in Section 3.01 are concluded.

.03 Directly tax related documents (defined in Section 4) remaining after the review specified in Section 3.02 shall be maintained in accordance with the provisions of these guidelines.

In addition, *Section 8.01* of the *Intelligence Division Procedures* provides as follows.

.01 The Intelligence Information Gathering and Retrieval System (IRM 9390) is discontinued. All districts will utilize the Information Index System, which will be described in a separate Manual Transmittal, to file and index directly tax related information. Such tax related information now in the discontinued Information Gathering and Retrieval System may be retained in district files and indexed only if it relates to a taxpayer included in an authorized project or for whom the Chief, Intelligence Division, has authorized information gathering.

A copy of the Privacy Act notice relating to the Information Gathering and Retrieval System is also attached.

In conclusion, we would like to clarify the use of the phrase "Intelligence files." The Service generally uses the phrase "Intelligence files" to refer to files of the Intelligence Division of the Internal Revenue Service. Such files were used in a very limited degree by the Special Service Staff. Primarily, this was due to an Intelligence analyst being assigned to the Special Service Staff for a short period of time after it was established. However, the files of the Special Service Staff were never used by the Intelligence Division, nor were they ever incorporated into or cross indexed with the files of the Intelligence Division.

[From the Federal Register, Vol. 40, No. 166, Aug. 26, 1975]

TREASURY/IRS 26.023

System name: Defunct Special Service Staff File being retained because of Congressional directive. ACTS: C–Treasury/IRS.

System location: National Office. (See IRS Appendix A.)

Categories of individuals covered by the system: Individuals suspected of violating the Internal Revenue laws.

Categories of records in the system: Internal Revenue Service Master File printouts, returns and field reports; information from other law enforcement government investigative agencies; Congressional Reports, and news media articles.

Authority for maintenance of the system: U.S.C. 301, 26 U.S.C. 7801 and 7802.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: This file is no longer being used by the Internal Revenue Service. The Special Service Staff was abolished August 13, 1973. Disclosure of information contained in this System of Records may be made to the Department of Justice in connection with actual or potential litigation. Access to the System is limited to Congressional Committees and individuals making Freedom of Information requests pertaining to themselves. For additional routine uses see Appendix AA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper records maintained alphabetically by individual and organization contained in vault at IRS National Office.

Retrievability: By alphabet.

Safeguards: Access controls are in conformance with provisions of the Physical and Document Security Handbook, IRM1(16)41. No IRS official has access to

these records except for retrieval purposes in connection with Congressional or Freedom of Information inquiries and litigation cases.

Retention and disposal: Records are being maintained solely for Congressional Committees at their request. When the Congressional Committees have completed their inquiries, the records will be destroyed except for those documents pertaining to pending litigation. Those records will be destroyed upon direction by the Court having jurisdiction over the documents.

System manager(s) and address: Assistant Commissioner (ACTS) National Office. (See IRS Appendix A.)

Notification procedure: Individuals seeking to determine if the System of Records contains a record pertaining to themselves may address inquiries to the Assistant Commissioner (ACTS) National Office. (See IRS Appendix A for location.)

Record acces procedures: Individuals seeking access to any System of Records may inquire in accordance with the instructions appearing at 31 CFR Part I, Subpart C, Appendix B. Inquiries should be addressed by the Assistant Commissioner (ACTS) National Office. (See IRS Appendix A for location.)

In addition, this System may contain some records provided by other agencies which are exempt from the Access and Contest provisions of the Privacy Act as published in the Notices of the Systems of Records for those agencies.

Contesting record procedures: See Access above.

Record source categories: News media articles, taxpayers' returns and records, informant and third party information, other Federal agencies and examinations of related or other taxpayers.

Systems exempted from certain provisions of the act: System exempted elsewhere in the Federal Register.

TREASURY/IRS 46.006

System name: Information Gathering and Retrieval System, Intelligence Division—Treasury/IRS.

System location: District Offices, Data Center. (See IRS Appendix A.)

Categories of individuals covered by the system: Potential subjects of criminal tax investigations. Associates of subjects.

Categories of records in the system: Financial records, newspaper articles, reports from other agencies, and similar leads, and photographs.

Authority for maintenance of the system: 5 U.S.C. 301; 26 U.S.C. 7602; 26 U.S.C. 7801, 7802.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice.

Routine disclosure may be made to other agencies to the extent provided by law or regulation (includong 26 U.S.C. 6103 and 26 CFR 301.6103 where applicable) and as necessary to report apparent violations of law to appropriate law enforcement agencies.

Routine disclosure may be made to States, the District of Columbia, the Commonwealth of Puerto Rico, or possessions of the United States, to assist in the administration of tax laws.

Routine disclosure may be made to other parties as necessary in the administration and enforcement of law as authorized by 26 U.S.C. 7801 and 7802.

Disclosure may be made during judicial processes.

For additional routine uses see Appendix AA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper, microfilm, magnetic tape.

Retrievability: By name.

Safeguards: Controls will not be less than provided for by the "Access Physical and Document Security Handbook," IRM1(16)41.

Retention and disposal: Discontinued January 22, 1975. Destruction when authorized.

System manager(s) and address: Official prescribing policies and practices—Director, Intelligence Division—National Office. Officials maintaining the system—District Directors, Director, Data Center. (See IRS Appendix A.)

Notification procedure: This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

Record access procedures: This system of records may not be accessed for purposes of inspection or for contest of content of records.

Contesting record procedures: See Access above.

Record source categories: This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

Systems exempted from certain provisions of the act: System proposed to be exempted elsewhere in the Federal Register.

Ms. ABZUG. You have all of those people with you. I was hoping we could get some direct answers.

Mr. ALEXANDER. I think you will get direct answers, Madam Chairwoman, as to the subject on which we were asked to testify.

Ms. ABZUG. When you appeared before my committee in March 1975, Commissioner, I think our information was far from accurate. We had an extensive discussion about the nature of your surveillance activities. There was a denial of the suggestion made by this committee that there had been politically motivated surveillance of persons by IRS agents and the collection of personal data, including their life styles, sex behavior, drinking habits, and other non-tax-related matters.

The following day, there was the exposure of Operation Leprechaun.

Now I am not going to go into the data which has already been revealed. My concern is, as you know, the Privacy Act and the Freedom of Information Act. And I want to know whether the data which has been collected in a most shocking manner, and which is non-tax-related information about individual citizens, is going to be made available to the persons about whom this information was collected. I want to know if they are going to have the chance, which every American should have under a free system of government, to know when its government acts incorrectly and to have the chance to correct errors by notifying the individuals of those mistakes. I just want to know that.

We have a piece of legislation and we are interested in the alacrity with which some of the agencies of Government are rushing to want to destroy files.

Mr. ALEXANDER. You pointed out in your opening statement, Madam Chairwoman, that I would probably reiterate my suggestion that the Special Service Staff files be destroyed. That is exactly what I propose to do.

Ms. ABZUG. Can you give me a reason other than possible embarrassment to the agency? Can you tell me why the IRS should not notify subjects of their files?

Mr. ALEXANDER. Sure. We do not think it is necessary; we do not think it is desirable; we do not think it is cost-productive. We think the best way to handle this tired old problem of the Special Service Staff, which has been reviewed time and time again by Congress—and properly so—should be to do exactly what I stated when I testified before Senator Church, and of which he approved. That is contained on page 96 of book II of the report of the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities.

I said that at the end of all of the inquiries into these files, I would like to take them to the Ellipse and have the biggest bonfire since 1814.

Ms. ABZUG. From whom are you quoting?

Mr. ALEXANDER. This is from page 96 of book II of the final report of the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities.

The part I just cited, Madam Chairwoman, was my suggestion to Senator Church.

Ms. ABZUG. You are quoting yourself?

Mr. ALEXANDER. I am also about to quote Senator Church.

Ms. ABZUG. But you are quoting yourself. You do not have to quote yourself; you are here. You can talk straight out.

Mr. ALEXANDER. Thank you. I will quote Senator Church, if I am permitted to do so. This is Senator Church, not me: "Well, I concur in that judgment. I would only say this to you; in a way, it might be a more important bonfire than the Boston Tea Party when it comes to protecting individual rights of American citizens. I am glad you feel that way. I am glad you took that action."

Ms. ABZUG. Isn't it interesting that those who committed the crimes are then to determine how to conclude that crime and what is done with the fruits of that crime?

Is there no question about that in your mind?

Mr. ALEXANDER. First, your characterization that the Special Service Staff was "a crime," is one to which I do not subscribe. I have stated my views of the Special Service Staff.

Ms. ABZUG. Your activities have been illegal. Laws were violated.

Mr. ALEXANDER. I question whether they were illegal. I think the Special Service Staff was an aberration. I think it should not have been created. And I happen to be the one who terminated it, Madam Chairwoman, before I was asked to do so by any congressional committee.

Ms. ABZUG. Then you should not destroy one shred of the material that you put together. You cannot have it both ways.

Mr. ALEXANDER. We would like to get rid of these files because we think they are irrelevant to the tax system and unnecessary to the tax system. If given an opportunity to explain, we will show you why we do not think that the proposal of notification is the best way to approach this problem which you and we both share.

Ms. ABZUG. I have long since agreed with you that those who were guilty of illegal practices toward the United States of America and its citizens are, in my opinion—if you don't mind my saying this, Commissioner—the least in a position to judge what should be done with respect to their illegal activities.

And do you know what that is? That is a continuation of a philosophy and a concept that developed in the Watergate era that somehow or other the executive branch of Government and its executive agencies make policy, carry it out, determine how to change it regardless of what the response is from the legislative branch and the people or even the courts.

That is a continuation of the philosophy which got us into trouble in the first place.

It happens that we are an oversight and a legislative committee. And I am telling you here and right now, as I have advised all of the other

agencies who have appeared here, that this is a congressional inquiry. We are considering a piece of legislation in which we are suggesting to those agencies that the way in which we can make Government operate properly once again and in which we can make the people have some confidence in it is to have a proper procedure based on law and order.

Just to take files and destroy them and have a bonfire has a lawless quality that I do not like. And I am putting you on notice that those files had better not be destroyed until this committee has finished its work and has made a determination as to what it considers to be the process that has to take place in order to protect the rights of individuals under the Privacy Act.

I am just putting you on notice, Mr. Commissioner.

Mr. ALEXANDER. We understand that. We have issued instructions to hold these files intact. I might say that what you have just stated embodies a goal to which we are just as devoted, Madam Chairwoman, as you are. But I think that your implementation of that goal is clearly in conflict with Senator Church. I suggest that you might take up your argument with him.

Ms. ABZUG. I will not take up the argument with him. I have a great deal of respect for Senator Church and for all of my colleagues in the House and the U.S. Senate. But this is an ongoing committee having consistent oversight and legislative jurisdiction over the Privacy Act and the Freedom of Information Act. Those are select committees.

I value the opinions of Mr. Church and others who are functioning within the orbit of a select committee whose activities have been concluded.

But this committee has a wholly different responsibility. That is to see that the laws presently on the books are faithfully executed. That is our responsibility and the responsibility of the executive branch under the Constitution.

So let us not confuse the issues. What has happened is that select committees of both Houses have conducted various investigations, have come forward with certain facts, and have made certain recommendations. The standing committees of the Congress have to proceed.

We are very thankful that both Houses have set up these committees. Their reports are extremely valuable to us and to the American people as a whole. But you have to realize that we must continue our regular work. And you in the executive branch are not going to interfere with that. You can be sure of that. And I would suggest that you do not.

Mr. ALEXANDER. We certainly do not propose to in any way interfere with the operations of Congress. I simply want to point out the divergence.

Ms. ABZUG. If you destroy these files prior to our having an understanding as to whether the rights of American citizens are protected under the Privacy Act, you may be interfering with more than the work of this committee.

I would like now for Mr. Harrington to have an opportunity to question you.

Mr. HARRINGTON. Mr. Alexander, I suggested to the staff that I would yield to them the balance of this time that I have for specific questions. But let me, if I could, ask a couple of questions which I would characterize as theoretical and philosophical and build on what Ms. Abzug was just discussing with you.

First, tell me how long you have been Commissioner and give a little of your background prior to that. When did you become Commissioner?

Mr. ALEXANDER. May 25, 1973. Before I became Commissioner of Internal Revenue, I was engaged in the private practice of tax law in Cincinnati, Ohio, for about 19 years, and in Washington, D.C., for about 6 years before that.

I had had some connections with the Internal Revenue Service and the Treasury Department through serving as a consultant to the Treasury Department and through serving on the Advisory Group to the Commissioner of Internal Revenue.

Mr. HARRINGTON. I recently had occasion to ask George Bush about this same problem, which you have characterized in a number of different forms as the discredited period of the Revenue Service's activity. You, as well, are a person who has had a broad degree of experience in the realm of public affairs and an active involvement in the last 2 or 3 years in that area. As such, are you personally satisfied in the cynicism existent toward Government in general and with the reasonably widespread condition of lack of belief of our society in its Government?

Ms. Abzug has pointed out that those people who were the principals in the development and implementation of programs of this kind should not be left to, in a sense, provide the remedy for their conduct. This may very well not be adequate to really restore a degree of confidence in Government—and to restore confidence in your process in particular.

Your process is perhaps premised more than any other in Government on confidence and on the integrity of that process. And you are basically confronted with an obligation as well as a realization of a need to rebuild that confidence.

And whether it is Mr. Levi as Attorney General or Mr. Bush with the CIA or you in your role, I find this "trust us" theme puzzling. "Trust us"—to quote Mr. Helms before the Senate select committee and—"You have to accept us honorable men who will carry out the changes and undo these past policies."

Given what you can certainly attest to by way of your own experience and the country's experience over the last dozen years, is that, in your opinion, adequate?

Mr. ALEXANDER. No; it is not adequate. The words "trust us" imply an absolute confidence which depends upon two more words which should preceed it—"examine us."

In 1974, I called for more congressional oversight of the Internal Revenue Service. I certainly received a lot in 1975—perhaps more than I anticipated.

But constructive oversight, oversight that delves deeply into what an agency does, what it believes, what its actions are, and what its failures to act are, is necessary to the proper working of the system. Only then, I think, can there be the trust that we must have, and which you have quite correctly pointed out, to make our broad based tax system, based on self-assessment by a large number of taxpayers work properly.

Of course, I do not come here saying, "Have faith in IRS and me and you can always be sure that we will do the right thing." No; we do not arrogate any such powers to ourselves. We are here for the purpose of examining this specific proposal—the proposal to require noti-

fication of each of the approximately 11,500 individuals and organizations in these ill-designed Special Service Staff files—to see whether that proposal is sound and beneficial and would achieve the goal which I believe is shared by this committee and by the Internal Revenue Service.

We think it is costly; we think it is awkward; we think it is time consuming. We question whether the goal would not better be served by a destruction of the files after, and only after, this committee and all other committees are satisfied that such destruction can take place.

We do have current addresses of more than 80 million individual taxpayers. We do have current addresses of a large number of corporate taxpayers, trusts, and other entities. But we do not have a match between the names and the incomplete identification of those in the Special Service Staff files and those in our master files. So while we do not claim that we do not have current addresses, we do claim—and we are right in so claiming—that we do not have a match.

As our statement points out, it would be a costly and time-consuming process to try to identify all of those in the Special Service files. These files are now well dated since I ordered the Special Service Staff out of existence on August 9, 1973.

Also, the problems of misidentity would be great. If we notified the wrong John Jones that he was in the Special Service file, we would unnecessarily arouse considerable concern.

And we have a further problem which both you and the chairwoman have brought out. We make, as we must, a large number of contacts under less than pleasant circumstances. frequently, with individuals and organizations. When they are called in for audit, for example, should people in the Special Service Staff files receive tax immunity because they were on those files? Surely they should not be harassed because they were in the files.

It would be difficult; it would create concerns; it would be troublesome, we think, to the successful operation of the tax system; and it would be expensive for us to engage in this process of notification. But we are engaged in a process of responding to everyone who asks if they are listed in these files. And a number have asked that question. We are glad they have.

Mr. Terry can explain in detail the costs that are described on page 5 of my statement and why we think the direct cost would be at least $200,000 for making this notification, and why we question whether this, with the delays and the other problems that I have mentioned, would be more than offset by the benefits in 1976 of telling someone that they were included in a system that was rendered defunct by my order back in 1973.

Mr. HARRINGTON. First, I would like to pursue that briefly, Mr. Alexander. I was neither interested in drawing you into a narrow defense of the legislation by the nature of my question, nor was I trying to get into a broad discussion on the theoretical occupation of equal segments of power under our system of the branches of Government.

I was attempting to draw from you a statement on a theme which I find running through at least a portion of the hearings which I have attended. There is the sense of "We will solve it our way; we think it is reasonable; we think you ought to take our word for it that we have stopped these practices." Or, "We have been the victims of negative

problems that have accrued." And, "Believe us, we are acting in the best interests of all in the approach we have taken."

I am not suggesting that that is an accurate summarization of all that you are trying to say, but that is the tenor of what I get from CIA, from FBI, and, to the degree that I understand your testimony, from you.

And I still ask: Given your knowledge of the American attitude today toward our Government—and I might add, with some wry appreciation for the success people have had in exploiting that attitude in the political arena over the past few months—do you think that that is an adequate posture for a person of your experience and maturity to take?

Mr. ALEXANDER. First, let us make sure that we understand the posture that I am taking and that this agency is taking—perhaps I should say, the posture that the agency is taking and that I am trying to take. Possibly there is a question of inadequate communication on my part.

I am not trying to say that we can arrogate to ourselves decisions of the kind that we are discussing this morning without an adequate and full explanation of the grounds for the position that we think is right. A dialog such as this that explores the specifics is beneficial to the workings of our tax system and our governmental system. But engaging in name-calling is not constructive. And I have that same wry appreciation that you have, Representative Harrington, because both of us have been in the press.

So we are here to try to discuss with you the specifics of this question in a way that appreciates the separation of powers, that appreciates the great legislative concern in remedying abuses and in trying to prevent future abuses to the extent we can in this imperfect world. And I do not mean in any way to try to assume powers or to assume omnipotence. Surely, I am fully aware of my lack of omnipotence and of my lack of being 100-percent right. And it is with that spirit that we would like to approach this problem with you.

Mr. HARRINGTON. I have no further questions.

Ms. ABZUG. Thank you.

Your remarks, Commissioner, raise an interesting question in my mind. I would like to get some conceptual understanding of what goes on in the minds of some of the people who are coming before this committee.

Your agency did these things. They were not proper. They were not cost-effective. For example, could you tell me how much the SSS operation cost?

Mr. ALEXANDER. I do not know how much it cost.

Ms. ABZUG. The Senate select committee report just issued yesterday said that the SSS program, in focusing greater than normal IRS attention upon its target groups, did not have a widespread tax impact on dissidents and activists. So you did all of these things and it did not have a tax impact on dissidents and activists. Now, when we ask that we inform the people as to what was done so that we can clear the air and so we can make certain that there is a proper confidence in government, suddenly it is not cost-effective.

Nobody considered the cost-effectiveness of the SSS program before. This is incredible. These are the things which create doubts in the

minds of people. You come in here and say that you are not going to notify individuals because it would cost $200,000. How many hundreds of thousands of dollars did it cost to maintain this illegal system? Nobody ever discussed that. But you used the taxpayers' dollars to maintain an illegal system and to spy on us. You did not worry about the cost-effectiveness then.

How can you then come in here and say, "Oh, no; we cannot notify these people because it is not cost-effective. It is going to cost $200,000."

Two hundred thousand dollars—if it is true—is a small price to pay for the restoration of confidence in the Internal Revenue Service. It is a small price to pay considering the cost to our precious democracy, not only in dollars, but the cost of invading the privacy of individuals—the cost of violating both laws and the Constitution. That is a big cost.

And it is not for you to say now that it may cost a few dollars. It is not for you to decide that it is not cost-effective.

Mr. ALEXANDER. You have posed a number of questions. First, I wish someone had focused on cost-effectiveness when they set up this Special Service Staff. Maybe it never would have been set up.

Second, I am glad that the Special Service Staff did not result in massive assessments against those on the list or the targets of the Staff. Had it operated more effectively, I think it would have been more of a problem to the tax system and to the people.

Ms. ABZUG. May I interrupt you at this point? Having been a victim of one of your operations, I say that the reason that it did not result in more moneys is that we are law-abiding citizens. I got a refund after one of your audits. The people you were investigating were law-abiding citizens and not even the distortions of those units could change that.

Mr. ALEXANDER. I am fully aware that you were on the "enemies list."

Ms. ABZUG. And that is so of a good number of people who were investigated because they were on political lists and so on. We know that situation.

Mr. ALEXANDER. I am aware that you were on the "enemies list," Ms. Abzug. I hope that actions the Internal Revenue Service has taken in the last 3 years, including one taken quite recently, will prevent the possibility of any future "enemies list" or a misue of the Service, such as those described in the Church report and in other reports and as has been done a number of times in the past—the recent past and otherwise.

Ms. ABZUG. In May of 1973, the IRS established the Information Gathering and Retrieval System. The IGRS was a new approach to intelligence gathering and to the storage and retrieval of so-called general intelligence, as contrasted with intelligence developed in the course of investigation of a specific tax case. What action has been taken recently with respect to the IGRS?

Mr. ALEXANDER. As far as intelligence gathering is concerned, we have put a hold——

Ms. ABZUG. I withdraw that question. I want to continue with this. What about the information that was put in the IGRS? Will that all be destroyed under your plans or under your projected plans?

Mr. ALEXANDER. I am only talking about the Special Service Staff files. We would like to get rid of the Special Service Staff files.

Ms. ABZUG. Wasn't the Special Service Staff information put into the IGRS?

Mr. ALEXANDER. No; I don't think so. Was it, Mr. Kuehling?

Mr. KUEHLING. It had no connection.

Ms. ABZUG. It had no connection. So not everything is in this IGRS. In other words, this is not a total storage and retrieval of so-called intelligence?

Mr. ALEXANDER. No.

Ms. ABZUG. You have other stuff that you keep in other indices. Is that right?

Mr. ALEXANDER. The Special Service Staff files were quite separate and still are quite separate because we are holding them pending the completion of congressional inquiries such as yours. We intend to continue to hold them until your inquiries are completed.

Ms. ABZUG. Did you put the names in that IGRS?

Mr. ALEXANDER. No.

Mr. KUEHLING. We did not. To my knowledge, there is no connection between the two.

Ms. ABZUG. What are you doing with the IGRS file?

Mr. ALEXANDER. The IGRS is simply a computer system for storing information that we gathered with respect to people about whom it was logical to have concern. The problem with the system was that it grew like Topsy and that it was not properly supervised. We put a stop to that system. Since then we have issued new and much more more restrictive information gathering guidelines. And at least one congressional committee is concerned about whether we are too restrictive.

Ms. ABZUG. Are you not concerned about that information which is improper which is in there? How are you going to get at it? There is a lot of improper information in the IGRS. Will you grant me that?

Mr. ALEXANDER. These are names. And they are somewhat silly names because one of them is the Internal Revenue Service. And I think we would have considerable concern about why we want to list the Internal Revenue Service as a taxpayer or a nontaxpayer, as the case may be. There are names of former Commissioners. My name is in IGRS.

The IGRS system was probably a good idea at the time for computerizing and developing a system which would be better than what it replaced, which was a by-hand oxcart type of system. The problem was that too much was placed in it with too little management attention. And so we put a stop to that.

Ms. ABZUG. How many subjects are in the IGRS file?

Mr. ALEXANDER. As I stated, I think that a check of 21 districts showed something like 465,440 names in the old IGRS system.

Ms. ABZUG. Is that 21 out of 50 districts?

Mr. ALEXANDER. I think that was a check of 21.

Ms. ABZUG. But if there are 50 districts, it is conceivable that you could have over a million names, isn't it?

Mr. ALEXANDER. I think that is highly improbable. I think the ones we included are big districts. Manhattan would have a lot more names than Cheyenne, Wyo., for example.

Ms. ABZUG. It is nice to know that. We get a lot of big things, but not commensurate with what we are entitled to get.

Mr. ALEXANDER. I should have used Los Angeles. Right after I said "Manhattan," I knew I had said the wrong thing.

Ms. ABZUG. What is going to happen with the IGRS under your purging system?

Mr. ALEXANDER. I don't know. I am going to find out about IGRS this morning—or this afternoon, as the case may be—and see what on Earth we have done after we called a halt to it.

Ms. ABZUG. I think it is interesting. We may have to revise our bill to include the IGRS.

Mr. ALEXANDER. I hope that if you do, you will increase the Internal Revenue's budget to take care of the problem of cost.

Ms. ABZUG. Let us not worry about that. You didn't worry about it. You expended all kinds of taxpayer's dollars. We will take care of that properly.

When someone writes the IRS under the Freedom of Information Act, do you inform him that his name is in the SSS file or the IGRS, if that is the case?

Mr. ALEXANDER. Mr. Keightley, will you answer that?

Mr. KEIGHTLEY. In cases where anyone indicates either an interest or feeling that he was on the SSS list, the Service——

Ms. ABZUG. But he or she has to know if he is on the list. Is that right?

Mr. KEIGHTLEY. That is not what I said.

Ms. ABZUG. Then let's get that very clear.

Mr. KEIGHTLEY. What I said was that if he asks if he is on the list or indicates some interest in unnamed lists, without knowing the type of list, we will, if we have an indication that he is interested in it, search the lists to determine if the name is on the list and process the request under the Freedom of Information Act.

Ms. ABZUG. If I write to you and say, "I understand you have a file on me," what do you then write to me?

Mr. KEIGHTLEY. We would ask you in what connection. We need the clarification because it may be an audit and you may be on a district file in Los Angeles or wherever. You may just want to know about that file. So we would usually ask for clarification.

Ms. ABZUG. So even if I ask for the information, you don't give it to me. Right?

Mr. KEIGHTLEY. When you ask for the information, we give it to you.

Ms. ABZUG. But I have to know what secret files you have on me. Right?

Mr. KEIGHTLEY. You do not have to know what secret files.

Ms. ABZUG. You just said that.

Mr. ALEXANDER. I do not think he did, Madam Chairwoman.

Ms. ABZUG. You tell me again what happens. If I write to you and ask if you have a file on me, then you write back and say: "What kind of file are you talking about?" Is that right?

Mr. KEIGHTLEY. Specifically, we have a decentralized——

Ms. ABZUG. Isn't that right?

Mr. KEIGHTLEY. Yes.

Ms. ABZUG. You don't take a quick look and say, "We have it in SSS or another file," and then notify me of that?

I am really trying to get this process in my head for the benefit of your procedure and our procedure. And I want to make sure that the

Privacy Act and the Freedom of Information Act are being carried out.

Mr. KEIGHTLEY. That is what I am trying to describe.

Ms. ABZUG. Now if I write to you and if I ask you if you have a file on me, you would then write back and say, "What kind of file are you talking about?" What do you write back?

Mr. KEIGHTLEY. We attempt to——

Ms. ABZUG. While I remember, I would like you to provide for the committee, without names, necessarily, because I do not want to invade anybody's privacy, 10 such requests in the last period of time. We would like the questions and the answers, but without the names so that nobody's privacy is invaded.

Let the record show that we have requested that.

[The material requested is contained in the subcommittee's files.]

Ms. ABZUG. Now, tell me the procedure.

Mr. KEIGHTLEY. The procedure is to attempt to provide people realistic help under the Freedom of Information Act and the Privacy Act. If we get a request and somebody says, "I want the file which IRS has on me," we are at a loss as to know where to look. Should we look in 52 districts; should we look in Service centers; should we look in the Intelligence Division—where should we look?

It certainly would not be cost productive for every request of that nature to result in a search of every possible district. So in an effort to provide them with what they are entitled to under the Freedom of Information Act or the Privacy Act, we contact them and say, "Could you be specific? Could you tell us the area where you live? Could you give us a hint as to what you are looking for?"

Usually the people will be able to tell us what they want. But, I think we have an obligation to do that under the Freedom of Information Act and the Privacy Act and not to spend a fortune looking for something that may not exist.

Ms. ABZUG. Don't you have an index?

Mr. KEIGHTLEY. We have many indexes. That is one of the problems.

Ms. ABZUG. How many indexes do you have?

Mr. KEIGHTLEY. I would not begin to know.

Mr. ALEXANDER. Do you know, Mr. Gibb?

Mr. GIBB. I have no idea.

Ms. ABZUG. How many systems do you have?

Mr. KEIGHTLEY. I don't know the total number, but we have a book covering all of the systems of records.

Ms. ABZUG. Ask one of your colleagues there.

Mr. KEIGHTLEY. I am advised by Mr. Gibb that it is in the neighborhood of 300.

Ms. ABZUG. How many master indexes do you have?

Mr. KEIGHTLEY. I do not know what you mean by master indexes. Those are the systems of records under the Privacy Act.

Ms. ABZUG. Do you have any index systems?

Mr. KEIGHTLEY. I have already said that we do have indexes.

Ms. ABZUG. How many do you have?

Mr. ALEXANDER. But we do not have one index for all of these systems.

Mr. KEIGHTLEY. You can't push a button in the Service to obtain everything we have on an individual. We regularly deal with the prob-

lem of people saying, "Why can't you just push a button and give me everything you have on me?" We don't have such a capacity. I have difficulty finding out where things are and I work there.

Ms. ABZUG. How long have you worked there?

Mr. KEIGHTLEY. About 10 years.

Ms. ABZUG. You should know by now where things are.

Since you have been working there for 10 years and have had an occasion to deal with the indexes and you are in charge of Privacy, how many indexes would you say there are?

Mr. KEIGHTLEY. The only survey that was done was done for the Privacy Act. There is a list of systems and records in the Privacy Act. The approximation is 300.

Ms. ABZUG. And what kind of indexes do you have?

Mr. KEIGHTLEY. I don't see how you distinguish between an index and a system of records. A system of records is material that is retrievable in identifiable form on an individual.

Ms. ABZUG. You see, it strains credulity. You have set up an IGRS system and put everything in this little computer. A lot of other agencies have done it and we have master indexes to them. But somehow or other, when we get into the question of how many indexes there are, nobody knows.

Do you know?

Mr. GIBB. No. I would assume there is something akin to an index reach of the system.

Ms. ABZUG. I would assume that.

Mr. GIBB. They are systems that are retrievable by name or number. Therefore, there is some kind of an index or some method of getting access to all of the systems.

Ms. ABZUG. And is there in this whole agency, which is collecting all of this information and dollars and so on, not an interrelated system of indexes?

Mr. ALEXANDER. Not that I know of, Madam Chairwoman. That is one of our many problems.

Ms. ABZUG. What do you think?

Mr. GIBB. The only thing, to my knowledge, that would in any way might be considered a compendium of any sort would be the individual master file itself. This is a record of tax returns filed.

Mr. ALEXANDER. But that doesn't have anything else in it.

Mr. GIBB. It does not interrelate, but there would be some overlap in what might be recovered.

Ms. ABZUG. Let me get off that subject.

Supply for this committee the information of the number of systems, the number of indexes, and what interrelated master index systems there are.

[The material follows:]

The Internal Revenue Service has reported 208 Systems of Records subject to the Privacy Act of 1974.

The concept of Systems of Records did not exist in the Internal Revenue Service prior to the advent of the Privacy Act. The 208 reported systems represent the Service's attempt to report all records which are subject to the Act in terms which meet the definitions provided by the Act. Broadening the definitions provided by the Act, including records relating to an individual's entrepreneurial capacity (such as may be on our Business Master File), or attempting to respond to a request for "all records about me" would of necessity expand the Service's systems well beyond the reported 208.

It should not be assumed that there are simply 208 places where records are located or 208 files which need to be searched in order to retrieve all records pertaining to an individual. Nor does any master index which could assist in such a task exist. In fact, most of the 208 Systems of Records do not have comprehensive indices of their contents, unless the system itself were to be considered the index.

The Internal Revenue Service is a highly decentralized agency designed to service taxpayers within the locality in which they reside and in connection with a wide variety of responsibilities.

The Service maintains a National Office, a National Computer Center, a Data Center, seven Regional Offices, ten Service Centers, fifty-eight District Offices and some nine hundred local offices, for a total of approximately one thousand separate locations. Records may be maintained at any of these locations, or may be retired in accordance with records disposition schedules to various Federal Records Centers.

Within any given location records are maintained separately by function such as Audit, Collection, Intelligence, etc. Even within a particular function, records may be in separate files depending upon use, assignment and type of action taken. Moreover, the Service views different types of taxes and different tax years as separate matters which would not be associated simply because they may relate to the same individual. A distinction is also made between open and closed cases.

The Internal Revenue Service does not maintain Central Files, nor does any cross-index to records by individuals exist. There are no circumstances under which the Service would in its usual course of business ever attempt to locate or associate all records which it may have pertaining to any individual. Accordingly, no mechanics exist for making such a search.

Even within a particular function at a particular location, it would be unlikely that a comprehensive cross index would exist, and the most narrowly defined requests could nevertheless necessitate the manual searching of a variety of files.

These circumstances obviously make it difficult to respond to Privacy Act requests for access to records. However, they reflect the fact that most Internal Revenue Service Systems of Records are maintained in order to process tax returns or carry out tax administration action; they generally are not maintained for the purpose of accumulating data on individuals.

The Internal Revenue Service Notices of Systems of Records are designed for the most practical approach for providing access to Service records, that is by relating the System of Records to the type of action involved or the purpose for which the record was created. Requests for access are to be directed to the system manager, who is generally the District Director or the Service Center Director for the area where the records are located.

While the Service's dispersed systems may at times preclude the retrievability of all records relating to a requester, they are consistent with the objectives of the Privacy Act since records which are widely dispersed, relate only to a particular action at hand, and are readily retired offer far greater protection for the privacy of the individual than would be possible under a highly centralized system.

An attempt to create a master index of all records pertaining to an individual, while making greater access under the Privacy Act possible, would, in addition to being prohibitively expensive, be contrary to the objectives of the Privacy Act since it would create a universal computer bank, would have a tremendous potential for invading the individual's privacy and would be irrelevant and unnecessary to accomplishing a legally required purpose of the Service.

Ms. ABZUG. Now, in your opinion, are there any grounds for any kind of notice similar to the program of the Justice Department of giving notice to Cointelpro victims?

For example, where the IRS took affirmative action such as an audit or a collection on the basis of the SSS files, do you not think that an individual should be notified that there has been action taken with respect to him? When you may have conducted investigations or you may have inquires from employers or from their neighbors or from their local governments, do you not think that that individual is entitled to know that certain things have gone on which may have had an effect on his life?

Mr. ALEXANDER. Now, we are talking about notifying the 225—I think that was the Joint Committee's number.

Ms. ABZUG. I'm starting somewhere.

Mr. ALEXANDER. The 225 is a lot lower number than 11,440.

Ms. ABZUG. Do you think those people should be notified?

Mr. ALEXANDER. That reduces the job. I think some of the people already know. And I think the problem of notifying the others is a smaller problem than what we were talking about. And we will consider that.

Ms. ABZUG. How do these other people of the 225 know about it? Did they make Freedom of Information inquiries?

Mr. ALEXANDER. Some have already asked about it; that is right.

Ms. ABZUG. How many Freedom of Information inquiries have you had?

Mr. ALEXANDER. I don't know out of that 225.

Ms. ABZUG. Please supply that for the record.

[The material follows:]

The Internal Revenue Service has had five Freedom of Information inquiries from the 225 persons against whom the Service took affirmative action on the basis of the Special Service Staff files.

Mr. ALEXANDER. We have a figure of about 400 that we think have asked about the Special Service Staff. Is that it?

Mr. TERRY. It is 475.

Mr. ALEXANDER. In total, 475 have asked about it. Of that number, approximately 75 were in the files and 400 were not.

Ms. ABZUG. How many people in the Special Service Staff files were notified, in your opinion?

Mr. ALEXANDER. I don't know. Apparently about 75 were notified.

Ms. ABZUG. And under what conditions did that come about?

Mr. ALEXANDER. Mr. Terry prepared this, so I will defer to him.

Mr. TERRY. We have referred to us from disclosure staff inquiries about the Special Service Staff files.

Mr. ALEXANDER. That is Mr. Gibb and Mr. Keightley.

Mr. TERRY. They are the recipients in the Revenue Service of the Freedom of Information requests and Privacy requests. They then raise the question with us of whether or not this particular individual is in the Special Service Staff's files. We make a search and we reply to them.

Our estimate is that we have had some 475, as Commissioner Alexander indicated. Of the 475 searches that we have made, we have found approximately 75 that were located in the files. The balance of about 400 were not located in our files.

We then gave that information to the disclosure people so they could respond to the taxpayer who had raised the question.

Now I think that earlier we indicated that in connection with cases that may have been worked, of the very small number of cases that were referred to the field out of the Special Service Staff files, those taxpayers would have been aware. If there was an audit conducted, clearly, they would have been contacted.

Ms. ABZUG. How would they be aware?

Mr. TERRY. They would be contacted by an internal revenue agent who was conducting the audit.

Ms. ABZUG. But they do not know why they were contacted. If you get an audit, you don't know why you are being audited. They are not aware of anything; they are just getting an audit.

Some people are pretty smart and suspect that they are being audited for political reasons, but most people just feel they are being audited.

And you haven't even notified those people whom you audited improperly and for purely non-tax-related reasons. Is that correct?

Mr. TERRY. I think that would be correct; yes.

Ms. ABZUG. Don't you think these people are entitled to be notified?

Why should the 75 who may have heard about the SSS have the information and the rest not have it?

Mr. ALEXANDER. The Joint Committee looked into this to see whether the audits and actions that were taken were properly taken or improperly taken. We have the problem of two people in the Special Service Staff file. One is audited who would not have been otherwise selected, but does not owe any taxes and may be entitled to a refund. The other person in that Special Service Staff file is audited and, lo and behold, that person, in addition to being in that file, has not been complying with the tax laws. Do we have an obligation to treat that person as being immune to the tax laws? We think not.

Ms. ABZUG. You are raising that issue, not me. I am only raising the issue of notification.

Mr. ALEXANDER. Right. And you have narrowed down the issue and I want to consider that.

These actions have been taken. In some of these actions, I know that the organization or person audited was aware of the connection between the audit and the listing of the Special Service Staff. And I think that awareness is fine.

But we are talking about an additional facet which is an obligation at this time, in 1976, to notify these people. But this is a much smaller group than the aggregate. Our problem is to deal with the aggregate, which is explained on pages 4, 5, and 6 of our statement.

Ms. ABZUG. Earlier you said that you had taken some action very recently which would change the operations of the IRS. To what were you referring?

Mr. ALEXANDER. Among other things, the actions we took with respect to information gathering were to try to make sure that we gather only information that is directly related to our job. That quite recent action involves keeping a record available to the public of contacts made from outside IRS with respect to IRS actions—such as audits, collection matters, or rulings.

We had previously taken action with respect to inquiries from the White House. We had previously done away with the old sensitive case system under which information with respect to so-called sensitive cases not only came to my office, but went past my office to the Treasury and, indeed, to the White House.

We think this is highly advisable.

Ms. ABZUG. It wouldn't cost a lot of money to notify those people who in fact had active files which resulted in audit and collection and so on. Don't you think they are entitled to that?

Mr. ALEXANDER. As I said in talking about only the 225—the number which I believe is mentioned in the Joint Committee report on

page 9—that represents a different problem and I want to consider it. I am uncertain at this time as to whether this particular notification would be beneficial or not. I am not prepared to say that it, in our judgment, would not be beneficial—as we have said, in our judgment, that trying to notify all of the 11,000 would not be beneficial.

Ms. ABZUG. What have you done to indicate to the public as a whole that there were certain systems maintained which were illegal or improper? I am not talking about what committees of Congress have uncovered and released in reports.

But what have you, as a responsible agency of Government, done so that you can help implement the Freedom of Information Act and the Privacy Act? Did you issue a press release indicating the nature of your systems and files, for example?

Mr. ALEXANDER. Sure. We have notified the public of the systems and records that we keep. In that notification, we list the Special Service Staff as a defunct system that we are still holding pending completion of congressional inquiries. We will be glad to file that with you.

Ms. ABZUG. Are you saying you have that in your statement of systems?

Mr. ALEXANDER. I am confused. The statement I presented this morning does not contain this particular matter that I have just described.

Ms. ABZUG. Where is it?

Mr. ALEXANDER. Our listing of our systems and records.

Ms. ABZUG. But that is required by law.

Mr. ALEXANDER. Of course. And we list the Special Service Staff as a defunct system.

Ms. ABZUG. I am not asking you about whether or not you have listed it. I would hope that you have.

Mr. ALEXANDER. I'm sorry. I did not realize that something required by law was necessarily bad.

Ms. ABZUG. No; I think it is very good. It would be very bad if any system is not listed on it.

Mr. ALEXANDER. Fine; we agree on that.

Ms. ABZUG. I am saying something else. The Government is only effective if it operates with citizens knowing what it is doing. I am trying to find out what, in addition to the listing, your agency may have done to make the public aware that there are these systems, including the SSS. Was there ever a press release by your Service on the issue?

Mr. ALEXANDER. I issued a press release on August 9, 1973, when I terminated the SSS. The SSS had come to public knowledge in 1972 in an article in the New York Times. I wish it had been brought up earlier. It came up in the publication of a manual supplement in April of 1973, and numerous congressional committees have issued reports on it.

Ms. ABZUG. Did you say in any of those press releases that individuals could ask for their files and write for them?

Mr. ALEXANDER. We did not say they couldn't.

Ms. ABZUG. But you didn't say that they could.

Mr. ALEXANDER. Not in the press release. I just abolished the thing in the press release.

Ms. ABZUG. But you didn't also take that additional step of saying that you have listed your systems and if people want to get their files under the Freedom of Information Act, they can get it.

Mr. ALEXANDER. This was before enactment of the Privacy Act.

Ms. ABZUG. But the answer is, "No." Right?

Mr. ALEXANDER. The answer is "No" as to that particular press release; yes.

Ms. ABZUG. Is it your view that the Privacy Act requires that files be expunged of irrelevant, inaccurate, and obsolete data which is in violation of the first amendment?

Mr. KEIGHTLEY. By "expunging," do you mean removing and destroying? I think the Privacy Act speaks for itself as to the types of material we should not maintain without statutory authority.

Ms. ABZUG. Do you believe that the Privacy Act requires that materials which are maintained about a person's political activity, which would violate the first amendment, should not be maintained in Government files?

Mr. KEIGHTLEY. There is some difficulty with the IRS because there are some areas where we have to inquire as to the political activities of an individual. These are in such areas as political contributions, for which there is a credit or deduction on the tax return and certain activities of exempt organizations. It is required that those be gone into.

Whether you characterize those as violations of the first amendment, I do not know. We do have a statutory obligation to look into certain areas. So I do not want to say that we should never do that. Sometimes we have a statutory obligation to do that. And beyond the statutory obligation, I think the activity is not proper.

Mr. ALEXANDER. We are doing our best to comply with the Privacy Act. I do want to point out that the Joint Committee Report on the Special Service Staff, on page 2, made it clear that the IRS would inform the person upon request whether the SSS maintained a file on him. So the public was told and told by the Joint Committee.

Ms. ABZUG. The Joint Committee report which the public reads like the daily newspaper. Right?

Mr. ALEXANDER. The Joint Committee report received a large amount of publicity. I am not about to say that this particular facet of it received none.

Ms. ABZUG. It is a question of how you believe Government should operate. If you think it should be affirmative in trying to live within the Constitution and make clear to the public what their rights are or their responsibilities are, you operate in one way. But if you have been operating in a way in which you think the executive branch of the Government is a government unto itself and doesn't have that responsibility, you can take that attitude. You can say that they can read it in the Joint Committee report.

You have some very serious problems. You violated the fundamental rights of American citizens. You still maintain files which continue that violation. And you don't bother to notify these people that their own Government has done this to them.

I do not understand it. If I were in your place, I would notify them. Those people are entitled to know that these files are maintained.

What I am talking about is the information which was obtained by

the IRS and the FBI and others about the political affiliations—not political contributions of individuals—of people. That is the area of information of which I am speaking.

And I ask you whether you think that such data, according to your interpretation of the Privacy Act, should be expunged?

Mr. ALEXANDER. You handled your part of it. I just wanted to say that the first part of the question, I think, contrasted two systems of government: one, a system that believes in abiding by the Constitution and that is respectful of individual rights and that is effective and responsible. That is exactly what we are trying to do in Internal Revenue. And for trying to do it, I have been smeared for 7 months. And the second, you have handled.

Ms. ABZUG. I want you to know, Mr. Commissioner, that I think it is regrettable that anybody has to be personally held responsible for actions that took place before you were there—and some while you were there. But I am not interested in that kind of thing.

I do want to make sure, however, that our Government operates within the law. That is all I am interested in. I want to restore some sense of confidence that it can happen. And there must be a greater openness in government.

So far, many of the people who are coming here are testifying as though nothing happened.

Mr. ALEXANDER. We are not testifying as though nothing happened. Some things happened that should not have happened, and it is up to us to try to make certain that they do not happen again.

Ms. ABZUG. There is nothing in the testimony which makes me feel that they won't continue to happen.

Mr. ALEXANDER. I am quite hopeful.

Ms. ABZUG. You have given me no evidence that we can prevent SSS from happening again. I asked you about IGRS; and according to your testimony, that is just names. You have the names of all kinds of people that do not belong in there. When asked what you are going to do about it, you don't know.

I asked about indexes. You don't know. I asked what happens when an individual asks for files. And according to this testimony, the individual has to know what system his file is in.

That is abusive, in my opinion. That is not going to prevent SSS from happening again.

Mr. ALEXANDER. We do not want to impose a burden on the individuals to guess. We do impose a burden on the individual, if you wish to call it a burden, to try to give us some idea of where that individual lives and what files that individual may be concerned about.

Ms. ABZUG. I think that is your obligation.

Do you have more questions, Mr. Harrington?

Mr. HARRINGTON. Mr. Commissioner, I would like to ask a couple of questions outside the framework of this morning's hearing. If it goes beyond your preparation or into areas you think are not appropriate to this committee, I understand that. But I would like to try since we may not have this occasion again.

There has been a series of disclosures, largely as a result of the SEC's involving itself in both domestic and foreign activity on the part of American corporations, that go to campaign funding which is outside the acceptable framework, that go to payments to a variety of

people to obtain contracts and to influence political activities, and that go to, I suspect, in looking at the Lockheed experience and some of the oil companies, involving themselves in the political processes of other countries.

What is the role the agency has played in this area when dealing with the consequences of these activities?

Mr. ALEXANDER. We are playing a major role and we intend to continue to play it. More than 40 corporations are now under investigation. Some of the investigations have progressed pretty far toward possible criminal evasion of the tax laws.

We are asking searching questions—our famous 11 questions—of about 1,200 of the largest corporations in the country which are included in our large-case program.

We have a major role to play. But our role is not the end-all because our role involves a situation in which someone not only made illegal payments, but also attempted to reduce taxable income for U.S. purposes by those payments.

If someone made illegal payments abroad and those payments had no effect on taxable income, either by the claim of an improper deduction or by an improper exclusion, then our role stops. But we have found in a number of cases that some of the major corporate citizens have not lived up to their responsibilities as citizens and that they have attempted to obtain a tax benefit, which is just as improper as the payment which they have deducted.

We do have a major role in this important area. The Secretary of the Treasury issued a press release back on February 10 calling for the intensification of the Internal Revenue's concern and action. And we are following his instructions.

We have just issued a manual supplement explaining in detail the 11 questions that we ask the chief executive officers and other officers of the major corporations in this country. We will be delighted to supply that to this committee.

Mr. HARRINGTON. Have you testified in detail to any of this before other committees of Congress?

Mr. ALEXANDER. Not recently. I testified before Congressman Nix's subcommittee in July of 1975, as I recall, on this subject of corporate bribes, particularly foreign bribes. A representative of the SEC testified with me.

We have a very close working relationship with the SEC. They are cooperating fully with us. I am sure I will be testifying more about this.

I have reported to the President's Task Force on Questionable Payments Abroad with respect to what we have done, what we are doing, and what we intend to do.

Mr. HARRINGTON. Is that public knowledge, and could that be made available?

Mr. ALEXANDER. The fact that I reported is a matter of public knowledge. I did not produce a written report.

Mr. HARRINGTON. Is the summarization something that you could provide us with?

Mr. ALEXANDER. I can tell you what I covered there. That was basically what I am covering now. But I did not summarize and I do not believe that any transcript was made.

I will be glad to answer any and all questions you have on this subject.

Mr. HARRINGTON. I am trying to get a sense of the scope of the activity that the agency has in this area. I will pursue the Nix reference.

During the course of the select committee activities, was this subject addressed at all through questions to you? I am speaking now of the Pike and Church committees. In other words, outside the framework of the Nix committee, have you had occasion to appear and to give detailed testimony before committees?

Mr. ALEXANDER. I do not recall. I cannot say that the subject did not come up because many subjects came up.

Mr. HARRINGTON. Was it discussed extensively?

Mr. ALEXANDER. The hearing was not primarily devoted to this matter. I have testified on this matter before, but I have not, of course, testified since we issued the May 10, 1976, issue of this new manual supplement, explaining in detail how we are going about this job.

Mr. HARRINGTON. Has there been a sharing of information that has been derived from the investigations that are ongoing with the executive branch with your agency?

Mr. ALEXANDER. Within the limits imposed on Internal Revenue to protect taxpayer privacy.

Mr. HARRINGTON. I meant it the other way.

Mr. ALEXANDER. Other agencies are cooperating well with us—the SEC particularly.

Mr. HARRINGTON. How about the intelligence agencies themselves? How about those, if we believe press reports, which have had knowledge of some of these practices dating back into the 1950's? Have you made any requests of them of this kind of information to aid you in your investigations?

Mr. ALEXANDER. I do not believe that we have received much, if anything, in the way of information.

Mr. HARRINGTON. Have you sought it?

Mr. ALEXANDER. Oh, yes. We are now about to receive considerable help from the Defense Department through the Defense Contract Audit Agency. I think that will be helpful to us.

As far as the intelligence agencies themselves, I doubt that the information that they developed would be nearly as helpful as that of the SEC and the DCAA.

Mr. HARRINGTON. I make particular reference to a story that appeared in early April in the New York Times which indicated that there is a reasonable belief that the CIA had specific knowledge of the Lockheed role in the development of political funding for closely allied parties in Japan as early as the 1950's. Have you made requests, for example, for their body of information, which now runs back some 20 years, to aid you in developing an approach to this subject?

Mr. ALEXANDER. I will have to talk generally because I do not want to talk about any specific taxpayer. I am sorry to say that I cannot respond specifically "Yes" or "No" to this particular question because I had not anticipated it this morning.

Mr. HARRINGTON. I appreciate that and I understand that. Thank you.

Ms. ABZUG. Mr. Alexander, I would like to ask another question. If my name were in a file which was collected by the Special Service Staff, and if I write in and ask about a file, do you have any priority as to where you look for names?

Mr. KEIGHTLEY. We usually base it on the nature of the request. If a person lives in a certain area, it would be normal to search the district in which the person is currently a resident. But, of course, people move. That is where you would go if you did not contact the person.

I think a number of the instructions indicate that when you are not sure what the person wants, you should help the person.

Ms. ABZUG. Do you have written instructions?

Mr. GIBB. Yes.

Mr. ALEXANDER. Do you have them with you?

Mr. GIBB. No; I do not.

Ms. ABZUG. Will you supply them for the record, please.

Mr. GIBB. We will supply them.

Ms. ABZUG. The Special Service Staff interests me greatly. According to the report issued last night, it believed its mission included saving the country from subversive extremists and antiestablishment organizations and individuals; reviewed for audit or collection potential organizations and individuals selected by other agencies, such as the Internal Security Division of the Justice Department and the FBI, on basis having no relation to the likelihood that such organizations or individuals had violated the tax laws. After reviewing information regarding such organizations and individuals, it referred cases to the field for action, some of which did not meet IRS criteria for audit or collection action.

At times, it used its status as a national office organization in a partially successful effort to pressure the field into proceeding further with audits and collection action than the field would have done in the absence of pressure from the national office.

I am reading from this report which was issued last night, dated May 11, 1976, on the "Internal Revenue Service; An Intelligence Resource and Collector."

This is shocking. And you are telling me that these people are not going to be notified by you that you have collected these files in this manner. And at least some of these names were selected by other agencies.

When you destroy your files on these people, will there not be copies of all of this in other places since the names were forwarded to you by other divisions of the Government?

Is there no obligation to the citizens of this country?

Mr. ALEXANDER. Surely, there is an obligation to the citizens of this country. I do not believe that is the question. The question is whether this obligation should be fulfilled in this particular way.

As I have stated several times this morning, and probably a dozen times before other congressional committees, I abolished the Special Service staff. I am very glad I did. This report points out the wisdom of abolishing it.

Ms. ABZUG. But you have not abolished the invasion of privacy of these individuals. You do not really accomplish that unless these individuals are notified and told what they have to do to protect them-

selves against the kind of investigations you may have conducted. They are entitled to that.

Mr. ALEXANDER. Under your bill, they would write us and tell us to destroy the files. We think the destruction of the file is an excellent idea. The invasion of privacy which you mentioned is, if anything, the continued maintenance of files at the request of the congressional committee.

Ms. ABZUG. Shouldn't they first decide what to do with the file and have the right to see it? They have a right to know what the Government has done to them.

Mr. ALEXANDER. Wait. What the Government has done to them, as far as the Internal Revenue is concerned, would be done only if Internal Revenue took action with respect to the taxpayers on file.

Now we are talking about the 225 plus the 550 or so of so-called war tax resisters. Those, I think, are mentioned on page 13 of the Joint Committee report.

But if we held the file, then it is the existence of the file that is a bad idea, isn't it? I hope we agree on that. Then we ought to do something about the file. We ought to get rid of the file. And that is what we want to do.

Ms. ABZUG. That is not for you to determine. You made possible the improper maintenance of the file to begin with.

It is an easy answer to say that you will just get rid of the files.

Mr. ALEXANDER. We think it is a sensible answer as well as an easy one. But that is apparently where we differ.

Ms. ABZUG. Yes. It is a sensible answer if you believe in autocratic government. But if you believe in democratic government, it is not a sensible answer.

Mr. ALEXANDER. We believe in democratic government. We believe in the same principles which you expressed so well this morning. We question whether achieving that type of government at its best requires this particular action.

Ms. ABZUG. We would be very happy to notify those 225 people. If you want us to notify these 225 individuals, perhaps we ought to have some discussion about the Privacy Act and whether it is being violated by your service, or whether the Freedom of Information Act is being violated.

I have asked you to provide the names of the last 10 people who have contacted you and the nature of those replies. I now would like you to provide a complete list of the people who have requested files, the number answered, and the nature of the answers.

Mr. ALEXANDER. We will do our best to provide you with what you have requested. We have a problem of compliance with section 6103 of the Internal Revenue Code, which protects taxpayer privacy.

[The material follows:]

Under separate cover we forward 297 packets of material to Mr. Jacobs of your Subcommittee. Each packet includes the initial request, further letters, if any, from the requesters and all our responses. In two of the packets we did not include the initial request because we were unable to find it. The documents we forwarded were edited to delete identifying information to preclude an unwarranted invasion of personal privacy. We also deleted income tax information because of the disclosure prohibitions of 26 U.S.C. 6103 and 7213 and the Regulations thereunder.

These requests for access to the files of the former Special Service Staff contain inquiries covering 446 entities (individuals or organizations). In many

cases, the requester sought information about others and not necessarily on himself. We are aware of inquiries about several other entities, but we are unable to locate the related packets because our files are maintained by the name of the requester.

[The material referred to above is contained in the subcommittee's files.]

Ms. ABZUG. You have supplied the list of 225 to other committees.

Mr. ALEXANDER. The Joint Committee on Internal Revenue Taxation has the right to taxpayer access. But as long as you do not want names, that eliminates the problem.

Ms. ABZUG. Just a second. You have supplied the 11,000 names to one of the committees of the Senate, I believe.

Mr. ALEXANDER. The Joint Committee, I think, looked into the files. The Ervin committee had the names. I think the Church committee had the names.

Mr. KUEHLING. And Senator Jackson asked for them.

Mr. ALEXANDER. So the answer to your question is, "Yes, we have in other cases provided the names."

Ms. ABZUG. How do you characterize the 11,000 names?

Mr. ALEXANDER. It is the approximately 11,450 names of individuals and organizations that were in the Special Service Staff files. I am not sure that is responsive to your question.

Ms. ABZUG. It is responsive. Would you please supply that list for this committee.

[The information follows:]

At this time we do not feel it appropriate or necessary to provide to the Subcommittee the list of individuals and organizations that were in the SSS files. Further dissemination of the list would only aggravate any invasion of privacy which may have already occurred.

As you are aware, the Service has recently adopted a program of affirmatively notifying the approximately 775 individuals and organizations on which there were referrals to the field, and asking whether they wish to have access to their file. Further, any individual or group can ask whether they were on the list and request the material in the file under the Freedom of Information Act.

Ms. ABZUG. Thank you very much for your testimony today.

[Mr. Alexander's prepared statement follows:]

PREPARED STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE

Madame Chairwoman and members of the committee, I am pleased to have this opportunity to meet with you and discuss the provisions of H.R. 12039, a bill to amend the Privacy Act of 1974, as they would affect the operations of the Internal Revenue Service. You can be assured that the present policy and procedures of the Internal Revenue Service are designed to require that information collected by it is limited to tax related information. For example, in June 1975 manual instructions were issued to all Service employees, setting forth guidelines and instructions aimed at providing that information collected by Service employees would be limited to tax related material.

The bill does contain, however, several provisions which give us problems. The balance of my statement will be devoted to these problems.

One problem concerns the bill's provisions relating to persons with respect to whom information was included in the files established by the Special Service Staff. I have two significant concerns regarding this provision. First, the Service does not believe it is appropriate or necessary for the Service to notify the subjects of these files and does not believe that any significant national or individual benefit would result from such a notification program. As you know, all of the activities of the SSS were terminated in 1973. Its files are inactive, outdated, and useless and would have been destroyed long ago if a moratorium on destruction of records had not, at the request of the congressional leaders, been imposed during the pendency of the congressional intelligence investigations.

The Special Service Staff has been thoroughly investigated and reported on by at least three committees of Congress. The first was the Subcommittee on Constitutional Rights of the Committee on the Judiciary, which issued its 350 page staff report in December of 1974. The second was the report of the Joint Committee on Internal Revenue Taxation, which issued its 100 page staff report in June of 1975.[1] Finally, and most recently, the Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities of the United States issued its final report two weeks ago, which deals in part with the Special Service Staff of the Internal Revenue Service.[2] None of these committees have suggested that the agency should be required to contact the subjects of these files in an effort to correct the previous abuses. Recommendation 66 of the Senate Select Committee's report recommends only that information gained by intelligence agencies be sealed or purged as soon as practical and then only if the information was obtained through illegal techniques.

The Joint Committee determined that referrals were made to the field only after analysis by the Staff led to the conclusion that there was some reason to believe that there might be a failure to comply with the tax laws. In the great majority of cases, no action was taken by the Service beyond the accumulation of information in the files. Of the approximately 11,500 files which the former Special Service Staff had established on individuals and organizations, referrals to the field for audit or collection activity were made in not more than 800 situations.

The actions taken by the Service with respect to the SSS files were for the purpose of carrying out the specific statutory responsibility of the Service to enforce and administer the Revenue laws. In view of this, the Service seriously questions what benefit would be gained from incurring the substantial costs which would be required to inform persons that they were the subjects of Special Service Staff files. In addition, I believe that there would be a potential harm from the notification program, since it would inevitably result in identifying these individuals once again as "special" taxpayers deserving of "special" treatment. This could be harmful to the taxpayer involved and would be harmful to the tax system.

This brings me to my second point. If the Service were charged with the responsibility of individually notifying the subjects of the thousands of SSS files, the administrative burden would be significant. Most of the SSS files do not contain addresses or other means of location which would be sufficiently reliable for purposes of attempting personal notification. It would thus be a very sizeable administrative task for the Service to pinpoint reliable means of personally notifying the more than 11,000 individuals and organizations which were the subject of SSS files. In more than one-third of the SSS files the search for a reliable means of notifying taxpayers would necessitate a search of the microfilm files of each of the 58 districts. Our estimate is that the direct costs associated with mail notification would be a least $200,000. Our task is complicated by the fact that some of the individuals may be deceased and many of the organizations may no longer exist. Our estimate of costs does not take into consideration the significant costs which would be associated with processing responses to the notification procedure and preparing, by deleting all third party confidential tax return information, these now totally inactive and useless files for examination.

I would also like to point out that the Internal Revenue Service has not attempted to claim, except where confidential sources or third party privacy are involved, the investigative files exemption regarding Freedom of Informaton Act requests by individuals or organizations, relating to the Special Service Staff files. The June 1975 report of the staff of the Joint Committee on Internal Revenue Taxation correctly noted that the IRS will inform a person (on their request) whether the SSS maintained a file on the requesting individual or organization, and will also inform the requester of the contents of that file. The IRS has testified to this, and we believe that it has been adequately publicized.

The best possible way to ensure, absolutely, that the information contained in

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[1] An earlier report of the Joint Committee, entitled "Investigation Into Certain Charges of the Use of the Internal Revenue Service for Political Purposes", December 1973, also contained some preliminary material of the Special Service Staff.

[2] The SSS was also the subject of discussion and questions at the Private Foundation Hearings Before the Subcommittee on Foundations of the Senate Committee on Finance in May and June 1974, but no report was issued. It was also the subject of hearings before the Oversight Subcommittee of the House Ways and Means Committee in June 1975.

the SSS files is not misused, or that it is not subsequently used as a basis for field action, is to provide for the destruction of the material. Destruction of the file is an option which H.R. 12039 would give to the person notified. In accordance with the spirit of this proposal, the Service intends to destroy the files at the earliest available opportunity. This seems to be the best way to accomplish the committee's objective—rather than provide for a costly and cumbersome notification procedure which vests the taxpayer with the option of requesting destruction of the records. It would, in our view, be far better to simply mandate the destruction of these files. In the case of IRS, this would be unnecessary because we intend to do it on our own.

I want now to turn to that portion of the bill which requires agencies to notify persons concerning unconsented, or warrantless, interceptions or examinations of communications or searches. The bill provides that persons subject to such actions by an agency must be notified of this fact, furnished with a clear and concise statement of their rights under the Privacy Act and Freedom of Information Act, and given the right to require that all copies of the information included in the files be destroyed. I understand that the subcommittee has received a somewhat detailed analysis of this provision of H.R. 12039 from the Department of Justice. I will not take the time to reiterate that general analysis. Let me say, however, that the provision has an unusually broad effect upon the operations of the Internal Revenue Service. The IRS obtains a good deal of the information which it uses for purposes of auditing tax returns as a result of its use of the administrative summons specifically provided for by the Internal Revenue Code. Despite the fact that its use of this prerogative is both judicious and controlled, information thus obtained is not obtained pursuant to search warrants. The administrative summons process is currently undergoing examination by the Congress as part of its consideration of the Tax Reform Act of 1975 (H.R. 10612). This bill, which has already passed the House and which is currently being considered by the Senate Finance Committee, generally provides that when a summons is being served upon a third party record keeper, such as a bank, notice of the summons is to be given by the Service to the persons who are identified in the summons as the persons to whom the records relate. The purpose of this notice is to give such persons an opportunity to stay compliance with the summons and to intervene in any judicial proceeding which may be brought for the enforcement of the summons.

It seems more appropriate for concerns which are related to the issuance of administrative summonses, and to the manner in which the Service obtains its information generally, to be considered against the background of the specific needs and responsibilities of the IRS. The pending Tax Reform Act, which contains provisions relating to the Service's use of the administrative summons, and other matters relating to tax administration, appears to be the most appropriate vehicle for Congress to consider these important matters.

Ms. ABZUG. Will the next witness please step forward?

How are you today, Mr. Cooke?

STATEMENT OF DAVID O. COOKE, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR ADMINISTRATION; ACCOMPANIED BY ROBERT ANDREWS, SENIOR ADVISER TO GENERAL COUNSEL, DEPARTMENT OF DEFENSE

Mr. COOKE. I am fine. And you?

Ms. ABZUG. Very well, thank you.

Are you accompanied by somebody today, Mr. Cooke?

Mr. COOKE. I am, Madam Chairwoman. I expect that Mr. Robert Andrews who is the Senior Adviser to the General Counsel of the Department of Defense may participate in the testimony. I do not expect any other individual to participate.

Ms. ABZUG. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COOKE. I do.

Mr. ANDREWS. I do.

Ms. ABZUG. Mr. Cooke, you have a written statement; but if you do not mind, because of the time factor, I would be glad to receive the statement for the record and proceed to ask you questions.

Mr. COOKE. I would, of course, prefer to read the statement.

Ms. ABZUG. I understand that. Mr. Cooke, you are the Deputy Assistant Secretary of Defense for Administration, are you not?

Mr. COOKE. I am.

Ms. ABZUG. In the organizational section of the DOD Directory, I note that there is an Office of Security under your jurisdiction. What does it do?

Mr. COOKE. The Office of Security under my jurisdiction relates to the security within the Office of the Secretary of Defense. It is responsible for handling the security clearances of employees of the Office of the Secretary of Defense. It is also responsible for insuring the physical security of the Office of the Secretary of Defense.

Ms. ABZUG. Last night I was reading this report on the NSA by the Church committee. I noticed that the NSA's Office of Security had files on approximately 75,000 citizens who are not affiliated with the Department of Defense.

In reading the Rockefeller report, I noticed that the CIA's Office of Security had files on individuals and organizations not affiliated with the CIA.

Now what about your Office of Security?

Mr. COOKE. The Office of Security within the Office of the Secretary of Defense contains only files of persons who are or have been affiliated with the Office of the Secretary of Defense.

Ms. ABZUG. It has files on American citizens?

Mr. COOKE. It does.

Ms. ABZUG. When the Secretary of Defense is considering high-level appointments, does your Office of Security initiate investigations of prospective candidates?

Mr. COOKE. My Office of Security would initiate investigations on prospective candidates provided they were not of the level of Presidential appointees.

Ms. ABZUG. When the Secretary of Defense is considering making awards to this or that citizen, does your Office of Security initiate investigations to make sure that there is nothing in the person's character that might be embarrassing?

Mr. COOKE. It does not.

Ms. ABZUG. Have investigations ever been conducted in the past or in the present on the past or present Secretary of Defense?

Mr. COOKE. Has my office investigated a past or present Secretary of Defense? No.

Ms. ABZUG. Have there ever been any investigations conducted by the Office of Security concerning the general staff or persons in the employ of the Secretary of Defense or the family of the Secretary of Defense?

Mr. COOKE. The Office of Security, under my jurisdiction, is responsible for granting security clearances for persons affiliated with the Secretary of Defense. This would include civilian employees, military personnel assigned to the Office of the Secretary of Defense, or consultants to the Secretary of Defense when any of this group requires access to classified information.

Ms. ABZUG. Does the Secretary of Defense know when you are conducting these investigations?

Mr. COOKE. The provisions for conducting investigations are specified in DOD directives outlining the scope and the conduct of the investigations.

Ms. ABZUG. Do you ever investigate people who work in their homes?

Mr. COOKE. Would you elaborate on that, please.

Ms. ABZUG. Do you investigate people who work in the home of the Secretary of Defense instead of in his office?

Mr. COOKE. No—do you mean private employees to the Secretary of Defense?

Ms. ABZUG. That is right.

Mr. COOKE. No.

Ms. ABZUG. No employee has ever been investigated. Is that right?

Mr. COOKE. Not to my knowledge.

Ms. ABZUG. How do you know that they are secure if you do not do that?

Mr. COOKE. We are investigating employees who have access to classified information. I would think that a personal employee to the Secretary of Defense would not have access to classified information.

Ms. ABZUG. I suppose the Secretary could take his folder home with him and read it.

Mr. COOKE. I think that is entirely possible. Nonetheless, I would also suppose the Secretary would adequately protect that classified information, if indeed he does take classified information home, from persons who have no clearance for access to that information or no need to know.

Ms. ABZUG. Have investigations been conducted of the Service Secretaries at any time or of people around them?

Mr. COOKE. The investigation of Service Secretaries is not within my purview nor within the purview of the Office of Security in the Office of the Secretary of Defense.

Ms. ABZUG. When you conduct these investigations, where are they stored and how are they listed in the Department's Privacy Act notice in the Federal Register?

Mr. COOKE. These investigations are published in our systems of notice. Could I furnish for you the exact notification? I do not have the exact system's notice with me.

Ms. ABZUG. Without objection.

[The information follows:]

The investigations (investigative files) referred to are those which are maintained in the Security Division of the Office of the Deputy Assistant Secretary of Defense (Administration). They are stored in a secure room in the Pentagon. The notice describing this system of records is in the Federal Register, Volume 40, No. 160, page 35373; the system designator is DCOMP P28; a copy of the notice is attached.

DCOMP P28

System name: The Office of the Secretary of Defense Clearance File.

System location: Security Division, Directorate for Personnel, Office of the Assistant Secretary of Defense (Comptroller).

Categories of individuals covered by the system: Military and civilian employees of the Office of the Secretary of Defense, its components and support organizations including the United States Court of Military Appeals and the United States Mission to NATO; experts and consultants serving with or without compensation; staff members of Congressional Committees requiring access to

classified information or material, employee or other agencies detailed to the Office of the Secretary of Defense, very important people selected to attend orientation conferences, USO and Red Cross applicants for overseas posts.

Categories of records in the system: Background investigations, national agency checks, security clearance actions, security violations, and supporting documents, briefings and debriefings.

Authority for maintenance of the system: EO 10450.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Security Division, Office of the Secretary of Defense—To grant and maintain security clearances or access. Other Government Agencies: To make available investigative material to authorized representatives of other security offices for extension of clearance to other government agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Active clearance files maintained alphabetically by last name of subject. Inactive clearance files serially numbered and indexed alphabetically.

Storage: Files maintained in file folders.

Retrievability: Active clearance files maintained alphabetically by last name of subject. Inactive clearance files serially numbered and indexed alphabetically.

Safeguards: Files are maintained in vaulted alarmed areas accessible only to authorized personnel that are properly screened, cleared and trained.

Retention and disposal: Records are permanent. Retained in active files until separation or end of requirement for security clearance. Held in waiting file indefinitely.

System manager(s) and address: Director of Personnel, OSD, Room 3B-347, Pentagon, Washington, D.C. 20301.

Notification procedure: See Exemption.

Record access procedures: See Exemption.

Contesting record procedures: See Exemption.

Record source categories: See Exemption.

Systems exempted from certain provisions of the act: Parts of this system may be exempt under 5USC 522a (j) or (k), as applicable. For additional information, contract the SYSMANAGER.

Ms. ABZUG. Could you describe for us the contents of a system of files, under the Security Division's control, known as the Secretary's Files?

Mr. COOKE. I am really not aware of any system of files which is characterized as the "Secretary's File."

Ms. ABZUG. It has been suggested that there are some files which contain investigations conducted by the Special Investigation Center of the Defense Investigative Service. You are familiar with that, are you not?

Mr. COOKE. I am.

Ms. ABZUG. That is, I believe, in the Office of Security which is under your control. Is that correct?

Mr. COOKE. The Defense Investigative Service reports directly to the Secretary of Defense. The Assistant Secretary of Defense, Comptroller, exercises policy guidance, if you will, over that office. His authority to exercise policy guidance has been delegated to me and my staff. The Office of Security itself exercises no policy guidance over the Defense Investigative Service. That policy guidance is exercised by the Director of the Defense Investigation Program Office.

Ms. ABZUG. But you do know something about the Special Investigation Center or the Defense Investigative Service, do you not?

Mr. COOKE. Yes.

Ms. ABZUG. How many files would you say they maintain?

Mr. COOKE. The Special Investigative Center—I do not know.

Ms. ABZUG. Or the Defense Investigative Service. Does anyone who is accompanying you today know that?

Mr. COOKE. The Defense Investigative Service has custody of the Defense Central Index of Investigations. And the Defense Investigative Service, which has been charged since its establishment with conducting background investigations, has files on the background investigations of all individuals for whom they have conducted them.

Ms. ABZUG. How many files are there? Do you know?

Mr. COOKE. I do not know the precise number.

Ms. ABZUG. Will you supply that information for the record?

Mr. COOKE. I will be very pleased to supply it for the record.

[The information follows:]

DOD Directive 5105.42, dated April 18, 1972, assigned to the Director, Defense Investigative Service the responsibility for conducting all personnel security investigations on DoD military and civilian employees and DoD contractor employees. As of April 30, 1976, the DIS maintains the record file copy of 834,306 of these investigations.

Mr. COOKE. If I may say, the Defense Investigative Service is investigating persons affiliated with the Department of Defense. They are applicants for employment; they are military personnel; they are contractor personnel who require access to classified information; they are civilian employees.

The Defense Investigative Service is not in the business of investigating persons not affiliated with the Department of Defense; and, indeed, our directives prohibit such actions.

Ms. ABZUG. Are you telling me that there are no investigations conducted by the Defense Investigative Service on civilians not affiliated with the Defense Department?

Mr. COOKE. I am.

Ms. ABZUG. You earlier testified that you do conduct some investigations of individuals for high-level appointments. They are not necessarily civilians affiliated with the Defense Department.

Mr. COOKE. The high-level appointments I am referring to are civilians who are considered for high-level positions in the Defense Department and the executive, other than Presidential appointments. I refer specifically to executive level 5 positions which we have in the Department, or some level 4 positions which are not Presidential appointments.

And, of course, some of our senior supergrades who are brought in from the outside would be investigated—as indeed are all of our employees who need access to classified information.

Ms. ABZUG. Have you ever directed, on your own authority or that of your superiors of the Security Division or the Defense Investigative Service, an investigation involving a nonaffiliated civilian?

Mr. COOKE. I have not. Let me qualify that. There have been some hearings recently on meat procurement which a committee of the Senate is now hearing. The Defense Investigative Service has cooperated with that committee and the Department of Justice where we investigated Defense employees and, in the course of the investigation, some contractor employees who were supplying meat to the Department of Defense. They were affiliated by virtue of their contracts with one element or another of the Department of Defense. It is a purely criminal investigation.

Ms. ABZUG. If you want to get a background on an individual considered for an important Defense Department job or for awards, do you not do a full check? I think you testified to that before.

Mr. COOKE. It depends upon the level of security clearance needed. For a nonsensitive position, the background check would consist of a national agency check.

If the individual is being considered for access to top secret information, the Defense Investigative Service would conduct a full field investigation.

Ms. ABZUG. Do these files include those who report or publish writings about the Department?

Mr. COOKE. I am not aware of investigation considered by the Defense Investigative Service or, for that matter, my Office of Security which dealt with individuals who published writings about the Defense Department—unless, of course, if they were considered for a position within Defense requiring access to classified information.

Ms. ABZUG. Do any of these investigations or files in your office include Members of Congress or congressional staff personnel?

Mr. COOKE. There are no files on Members of Congress. Pursuant to a longstanding arrangement with congressional committees, the Office of Investigation does clear, at the request of committee chairmen or individual Members, staff members of either a congressional committee or a congressional staff.

By the way, Madam Chairwoman, Mr. Andrews suggested you might be referring to our so-called "Leak Investigations." Our leak investigations do not encompass an investigation of the writer of an article where we consider there may be classified information. They are concerned solely with the employees, military or civilian, of the Department who may have furnished such classified information.

Ms. ABZUG. What kind of files are kept by your Office of Security?

Mr. COOKE. The Office of Security keeps the investigative files on persons who have been affiliated with the Office of the Secretary of Defense, who have received clearances or are applicants to receive clearances to classified information.

Ms. ABZUG. And you do keep them on congressional staff personnel?

Mr. COOKE. We keep them on congressional staff personnel whom a chairman or a Member of the Congress has requested us through our Legislative Affairs Office to clear for access to classified information.

[Additional information follows:]

The files referred to are those relating to the clearances of Congressional staff personnel. The files which contain the clearance records of Congressional staff personnel are designated as DLA01 in the Federal Register, Volume 40, No. 160 at page 35382. A copy of the Federal Register notice is attached. This system contains only data on the clearance status of Congressional staff. The investigative file on which the clearance determination is based is contained in the system designated DCOMP P28 described in one of my previous answers.

DLA01

System name: Security Clearance File.

System location: Primary System-Office of Research and Administration, Assistant Secretary of Defense (Legislative Affairs), Washington, D.C. 20301.

Categories of individuals covered by the system: Congressional Staff Personnel.

Categories of records in the system: Card file listing security clearances for Congressional staff personnel.

Authority for maintenance of the system: Executive Order 11652.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: When classified material is submitted to Members or committees of Congress, the card file is screened to insure that the person receiving the material is properly cleared.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:
Storage: Vertical file cards.
Retrievability: Card files are listed alphabetically by last name and committee or Member to whom assigned.
Safeguards: Afforded appropriate protection at all times.
Retention and disposal: Kept on personnel only during the time employed by the Congress.
System manager(s) and address: Office of Research and Administration, Assistant Secretary of Defense (Legislative Affairs), Washington, D.C. 20301.
Notification procedure: Requests should be addressed to the SYSMANAGER.
Record access procedures: Procedures for gaining access should be directed to:
Office of Research and Administration, Assistant Secretary of Defense (Legislative Affairs).
Room 3D932.
Pentagon Building.
Washington, D.C. 20301.
Telephone: 697-9166.
Contesting record procedures: Office of the Assistant Secretary of Defense (Legislative Affairs) may be contacted for rules for access and contesting contents of records and appealing initial determinations by the individuals.
Record source categories: Certificate of Clearance (SD Form 176) is received from Director, Personnel Security, Office DASD(Admin)OASD(C).
Systems exempted from certain provisions of the act: None.

Ms. ABZUG. What is the Department of Defense's policy position on the destruction of records it holds of nonaffiliated civilians prior to notification of these individuals that files exist?

Mr. COOKE. I think that we were well in advance of the Privacy Act. In 1971, DOD directive 5200.27 severely curtailed the files that we had admittedly had on nonaffiliated civilians.

Ms. ABZUG. Where were these files? If none of them were in your office, where were they?

Mr. COOKE. Some of the files were, as I testified before you before, Madam Chairwoman, in computerized data banks, growing out of the Army's civil disturbance activities.

Other files were largely in the repositories of the service investigatory agencies.

And we promptly mandated the destruction of those files at the time. Those files were destroyed at that time. We have had the occasion to check and recheck. There is one exception. And I have testified to that exception before your committee and before Senator Ervin's. I said, if I may quote:

We have been systematically purging files previously accumulated in the field of any information relating to persons not affiliated with the Department of Defense. Field inspections confirm that these files are entirely purged. However, there remains a large number of files in dead storage in central repositories which may or may not contain information on nonaffiliated persons. Our policy is to destroy these files when we come upon them because at the time full-scale screening and purging would have cost us many millions of dollars.

And with that exception, which we testified to fully and frankly as early as 1974, the files have been destroyed.

Ms. ABZUG. You have claimed that you destroyed the Army's spying files. Copies of those files, or portions of them, are still in existence outside the Department. Isn't that correct?

Mr. COOKE. There is one computerized data bank printout of computerized data bank file which was preserved in 1971 incident to litigation arising out of a case which, at the time, was entitled *Laird* v. *Tatum*. That file was turned over to the Department of Justice. It

has been out of our custody since that time. I understand it is still in existence and now in the possession of the Senate select committee. But other than that, the Army computerized files have been destroyed.

Ms. ABZUG. The Freedom of Information Act does not cover local and State police units. There is no compulsion for local police to notify or open up their files which may maintain illegally gathered Army surveillance records. Wouldn't there be some value if the Defense Department were to notify persons about whom the Department still has improperly gathered files?

Mr. COOKE. Madam Chairwoman, I do not believe those files were improperly gathered at the time. That matter was litigated up to the Supreme Court in *Laird* v. *Tatum.*

Second, it has not been, and never has been, our practice to furnish any information out of our investigative files to State or local police.

Ms. ABZUG. As I remember the *Laird* case, it was decided on the technical point of whether the plaintiff had standing. The Supreme Court did not determine that those files were properly kept. If they were, I do not know why you agreed to get rid of them.

Mr. COOKE. There have been at least two cases on that point: *ACLU* v. *Westmoreland*, in 1971; and *Laird* v. *Tatum* in the Supreme Court. The Supreme Court expressly decided that unless there was some showing that an individual sustained or was immediately in danger of sustaining a direct injury, the case did not reach the level of a constitutional question. So I think the issue was expressly decided in *Laird* v. *Tatum.*

Ms. ABZUG. I do not agree with you. What was decided was exactly what I said before, which you have now repeated.

And if you thought these files were so legally maintained and so proper, why would you get rid of them?

Mr. COOKE. We decided to get rid of them because we found there was no use, need, utility, or reason that we should maintain files on unaffiliated civilians. That was the basic reason which lead to the issuance by the then Secretary of Defense Laird of DOD directive 5200.27 in the spring of 1971.

Ms. ABZUG. But you were collecting this information, nevertheless, on U.S. civilians.

One of the fundamentals of a democracy is that the Army cannot determine what should happen with civilians. That in itself goes in the face of what our whole structure is about. I find it a little terrible to listen to you at this point suggest that what you did was proper. If you are not going to admit that it was wrong, then you are doing to continue to do it.

And, indeed, after you said you destroyed files, we found files, didn't we? During the late 1960's, you still were collecting information on U.S. civilians.

When that happens, we do not have a democracy; then we have a military dictatorship. And that is what we do not want to have in this country.

Were copies of its reports made available to the Navy and the Air Force?

Mr. COOKE. I believe at the time in question, copies of civil disturbance material were furnished to the other investigative agencies within the Department of Defense.

Ms. ABZUG. Were copies given to local and State law enforcement agencies?

Mr. COOKE. They were not.

Ms. ABZUG. Did any branch of the service, to your knowledge, destroy any large quantity of records on unaffiliated civilians shortly before the alleged Mansfield-Scott moratorium of January 1975?

Mr. COOKE. Let me comment in this way, Madam Chairwoman. We recognize, as I testified before Senator Ervin, that we had the problem of dead storage. The services have been since that time, to the extent their resources permitted, destroying files. The Army has completely purged their files. The Air Force has purged files at least in the filing categories which were likely to contain unaffiliated civilian information, and which had been gathered prior to the issuance of DOD directive 5200.27. The Navy was the last in line, as I believe the Director of Defense Investigative Program Office revealed to your staff members. This was largely because the Navy's system of filing makes it necessary to look at every individual carton and every individual file to determine what, if any, information might be nonaffiliated civilians.

In the fall of 1974, after some discussions in the Defense Investigative Review Council, the Under Secretary of the Navy determined to accelerate his efforts to destroy this material. And I can say the destruction of Navy files was in no way occasioned by the advent of the moratorium. We did not know it was coming.

Ms. ABZUG. On April 23, 1976, Deputy Secretary of Defense Ellsworth advised Senator Church that he had instructed the National Security Agency that it was to turn over the information secured by the NSA under its Watch List program to the Principal Deputy Assistant Secretary of Defense for Intelligence. Has that material been turned over?

Mr. COOKE. That material was in the possession of the Senate select committee. I do not know whether it has been returned to us yet. I think the answer is "No."

Ms. ABZUG. Do you mean that some of it was turned over and some of it was not?

Mr. COOKE. I think the material referred to was in the possession of Senator Church's committee. I do not know whether we have it back yet or not.

But Deputy Secretary Ellsworth directed that it be not returned to NSA, but it be returned, as you have said, to our DASD (Intelligence).

Ms. ABZUG. The Watch List contained materials including information gathered between 1967 and 1973 on U.S. civilian dissidents, didn't it, and went under the code name of "Minaret"?

Mr. COOKE. Madam Chairwoman, I am not familiar with the details of the Watch List. I perused the report that was issued last night, and on the basis of that report, I would say, "Yes."

Ms. ABZUG. What does the Department of Defense intend to do with these files?

Mr. COOKE. The Department of Defense intends to destroy them once the moratorium is lifted.

Ms. ABZUG. You are aware of the fact that we are holding hearings concerning a bill which requires certain notification and so on, and which gives the individual, under the Privacy Act, the right to see that file and to determine what is to be done with that file, are you not?

Mr. COOKE. I am.

Ms. ABZUG. What are you going to do about that?

Mr. COOKE. Let me make a couple of comments which will also explain our opposition to the bill, Madam Chairwoman.

The Privacy Act at this time refers to systems of records which are identifiable and retrievable by an individual's name or some other identifying symbol. It is my understanding that the Watch List files are not files within the meaning of the Privacy Act.

They cannot be accessed by names of individuals.

Ms. ABZUG. On what grounds do you make that statement?

Mr. COOKE. We have checked with the custodians of those files. The files which are part of the foreign intelligence files, or were part of the foreign intelligence files of NSA, are not files within the meaning of the Privacy Act.

Ms. ABZUG. What about the information that you got using that Watch List?

Mr. COOKE. The information, again, Madam Chairwoman, is not accessible by the names of individuals.

[Additional material supplied by the witness follows:]

Since my appearance before the Subcommittee, I have learned that those materials generated by the so-called "Watch Lists" were filed in chronological order and that well prior to the enactment of the Privacy Act, these records were sealed and marked for destruction. However, on advice of counsel, the records were not destroyed and became subject to the Senate moratorium. These records were for a long period of time in possession of the Senate Select Committee. Names associated with the so-called "Watch List" were provided to the Senate Select Committee on Intelligence and most of these were returned to DOD and placed under seal along with material produced from these lists.

Ms. ABZUG. In the Robert Ellsworth letter to Senator Church, dated April 23, 1976, and to which I referred a moment ago, it says:

It would be understood that no records relating to pending litigation, or to any outstanding requests for records from congressional committees, would be destroyed but rather that these records would in the normal course of business be preserved.

Mr. COOKE. That is correct. And to the extent to which these files are the subject of litigation and being considered by this subcommittee, we of course would not destroy them until the end of the hearings or the end of the legislation, as the case may be.

Ms. ABZUG. I request that you supply this subcommittee with a list of all individuals, groups, and organizations on the Minarest Watch List for this record.

Mr. COOKE. Madam Chairwoman, I have been advised that these files are not accessible by the names of individuals. I will undertake to see what I can do. But, again, I am not familiar at all with the operational details of the files or the activities in question.

Ms. ABZUG. Very well. I repeat the direction that I gave you on the record. Please supply that for this committee.

[The material follows:]

The Minaret Watch List did contain a small number of names of U.S. citizens who were of interest from a civil disturbance point of view; when the list was active and in use, these were accessible by name. The Minaret operation was discontinued in September 1973, the files are sealed and no longer are in the custody of the National Security Agency. They are still considered to be classified for national security reasons and cannot be released without the consent of agencies outside the Department of Defense. These files have nothing to do with the ap-

proximately 75,000 files referred to in the Church Committee Report, page 778, Book III, which were destroyed several years ago.

Ms. ABZUG. The next thing I want to ask you about is the NSA code program called Shamrock, which monitored communications of millions of messages of American citizens. How many of these were turned over to other segments of the Department of Defense?

Mr. COOKE. I do not know, Madam Chairwoman.

Ms. ABZUG. How many were turned over to other agencies of the Government?

Mr. COOKE. I do not know the answer to that.

Ms. ABZUG. Benson Buffham, the Deputy Director of NSA, told the Church committee: "We maintain permanent-type records of all of our products." Does this mean that the NSA keeps a record of all materials it analyzes?

Mr. COOKE. I think the answer to that, Madam Chairwoman, is that the NSA keeps the reports it creates out of the material it has. Again, it is my understanding that the activities in question are not systems of records of individuals as defined in the current Privacy Act.

Ms. ABZUG. I am not too sure why they are not indexed by name.

Mr. COOKE. They are not indexed by name.

Ms. ABZUG. How can you deal with that Watch List if there is no indication of the name?

You are spending millions of the taxpayers' dollars in putting together a Watch List and getting information. How can you get at that information?

Mr. COOKE. I would suggest that to talk about the details of the Watch List that it might be advisable to call someone from the National Security Agency. I note that the Director of the National Security Agency testified in open session on the Watch List before the Senate select committee.

Ms. ABZUG. I think I see Mr. Lowman here. Am I wrong?

Mr. COOKE. No; I think I see him too.

Ms. ABZUG. Would you like to come forward, Mr. Lowman?

Mr. LOWMAN. No, ma'am.

Ms. ABZUG. I beg your pardon; I did not hear your answer.

Mr. LOWMAN. NSA was not scheduled to testify today, Madam Chairwoman.

Mr. COOKE. Madam Chairwoman, we are prepared to respond to your inquiry as to the nature and extent of files currently maintained by the Department of Defense. Files relating to the Watch List were destroyed in the summer of 1973; the files with respect to Shamrock were ended and destroyed in May of 1975. So these files are not those currently maintained by the Department of Defense.

Ms. ABZUG. There seems to be some confusion in the testimony and the written record. A letter written by Robert Ellsworth to Frank Church on April 23, said as follows:

Regarding the materials provided to your committee by the National Security Agency on the so-called Watch List, I have instructed NSA to turn over to the Office of the Principal Deputy Assistant Secretary of Defense (Intelligence) all such materials still held by NSA. Consequently, I request that those Watch List materials which the committee does not intend to retain be returned to the above office rather than to the NSA.

And I thought you had testified that you did get some of that returned to you.

Mr. COOKE. I testified that I was not aware of whether the Senate select committee has returned the material relating to the Watch List which was furnished them.

Ms. ABZUG. You also testified that they were all destroyed. So which is it?

Mr. COOKE. No; I testified that the operations on Watch List and Shamrock—or at least that is what I meant to say—were terminated; Watch List in the summer of 1973, and Shamrock in May of 1975.

Ms. ABZUG. Let's get the record clear. You are not testifying that those files no longer exist, are you?

Mr. COOKE. I am not.

Ms. ABZUG. So they exist somewhere?

Mr. COOKE. They may.

Ms. ABZUG. And, therefore, what may be existing are some files on the Minaret operation, the Shamrock operation, and the Watch List, which includes files on thousands of American citizens. According to the report issued last night, the Office of Security of NSA maintained files on approximately 75,000 American citizens.

Mr. COOKE. As to that, the report also stated explicitly, if I remember since I only had the chance to peruse it this morning, that those 75,000 were destroyed.

Ms. ABZUG. Does the NSA or any other Government agency retain an index of those files?

Mr. COOKE. I do not believe it does. We will check that out and supply it for the record.

Of those American citizens who were investigated because of affiliation with the Department of Defense for security clearance, yes; we would have an index as to those. But may I check that for the record as to the remainder?

Ms. ABZUG. You will, please, supply that information for the record.

Mr. COOKE. I will be pleased to do so.

[The material follows:]

The 75,000 files in question were not maintained by the NSA Office of Security, but by another element of the Agency and were destroyed some time ago. However, a type of index of these 75,000 files is still in existence. These files and index are not related to the Watch List Operation or Project Shamrock. It is noted that on page 778 of Book III of the Church Committee Report, the Select Committee stated that: "Unlike CIA Operation Chaos, these files were not created for the purpose of monitoring the activities of Americans, but for carrying out NSA's legitimate foreign intelligence mission."

Ms. ABZUG. We have read a lot of reports from many different places and in the press that various police departments have military intelligence information. And I believe that in one particular case, in Chicago, if I recall correctly, there seems not to have been a denial of that.

So if you are going to proceed to destroy files, but the information in those files is in the possession of other units of government or other agencies, then your purpose of destroying the files will not be fulfilled. And your objective, which is to purge the Government and its various departments of the maintenance of illegally collected files, cannot be achieved.

Mr. COOKE. Again, I must take exception to your characterization of "illegal," Madam Chairwoman.

Ms. ABZUG. You can take exception all you want. That is your right. But I can tell you that nobody that I know of who has paid any attention to any of this believes that was legally maintained.

How could you say that the Army had the right to spy on American civilians because the Army did not agree with what their positions might be on the war in Vietnam?

The Army happened to be making policy here and they are still trying to do that. But there are still civilians in this country who are going to change that.

The Department of Defense at this moment is causing a lot of people a lot of suffering in this country by attempting to indicate whether they can eat, whether they can have jobs, and so forth so that they can have a $114-billion military budget. But a lot of people object to that. And what they most object to is the Army's spying on American civilians.

That is not suitable to a democracy. Maybe you think it is legal in the sense that you cannot specifically show how many people violated criminal law. But all of those people violated the Constitution.

Mr. COOKE. I respectfully disagree with you.

Ms. ABZUG. Can you tell me on what basis you think the Army has a right to spy on American citizens because they differ with Defense policies? Can you tell me the basis for your saying that?

Mr. COOKE. The Army did not undertake this action as a result of the Army. The Army took this action at the direction of civilian authority pursuant to statutory authorization in 10 United States Code, 331, 332, and 333.

Ms. ABZUG. What was that provision?

Mr. COOKE. If you will give me a minute, I will see if I can find it.

Ms. ABZUG. Absolutely.

Mr. COOKE. Section 331 of title 10, United States Code provides that upon the request from the Governor or legislature of a State, the President may dispatch Federal troops where necessary to suppress an insurrection in the State.

Ms. ABZUG. Stop there. Do you have evidence that these files which were collected were necessary to suppress an insurrection?

Mr. COOKE. May I read the other two provisions? Section 332 provides that the President may, when he determines the unlawful obstructions make it impractical to enforce the laws of the United States, he may then use the Armed Forces to enforce Federal law.

Section 333 relates to the use of Armed Forces when there is the denial of civil rights protected by the Constitution.

At the time in question the Army undertook these investigations, there was every anticipation that Federal force might be used. In fact, it was used, if you will recall, in any number of situations. There was general agreement, not only in the executive branch, but here in the legislative branch, that we lacked information necessary to deal adequately and safely in such situations.

It was for that reason that civilian authorities directed the Army to undertake this program.

Incidentally, a collection of Army files was largely FBI reports, newspaper clippings, and open agent observation of public activities.

Ms. ABZUG. Did any Attorney General request this activity; and, if so, which one?

Mr. COOKE. I cannot go beyond the specifics, except that the current Church report details, in some degree, the civil disturbance situation.

Ms. ABZUG. Do you grant me that there was no insurrection?

Mr. COOKE. Indeed I will.

Ms. ABZUG. I remember when President Nixon and the Attorney General arranged to have 10,000 young people arrested and brought into the prisons of Washington, and they were all released at the trial.

You may use that statute, but there was no evidence that there was any insurrection. You took information about people who differed with both the administration and the Pentagon officials on their position on the war in Vietnam.

I will grant you that when you are conducting an illegal and monstrous war that anybody who opposes it appears to you to be conducting an insurrection. But that was, thank God, in the tradition of American protest. And that is not insurrection. As long as you fellows up there in the Department of Defense think that is insurrection, we are in trouble. That is petitioning for a redress of grievances under the first amendment. That is differing with Government and seeking to influence the course of Government. And that is as American as apple pie.

And when you fellows get to be as American as apple pie and appreciate the Constitution and that civilian protest is the cornerstone of democracy, we will be a much better Government. But not until then.

Mr. COOKE. I did not say that we considered that an insurrection. I said that these statutes authorize the use of Federal force.

Ms. ABZUG. But you have never demonstrated that the spying that you did on ordinary American citizens because they protested against the war came close, in any way, to any of those statutory provisions. And that is the issue.

And that is why you maintained those files illegally. You would not have destroyed those files unless you knew they were illegally maintained. And you also probably destroyed them because there was a lot of information there which you know was illegally gotten together. That is the only reason you would destroy them.

Why would you now want to destroy files—unless you know they were illegally gotten together? Why do it? If it is legal, you should maintain it.

Mr. COOKE. Madam Chairwoman, the information, as I said, came from FBI reports and newspaper reports and was not of any particular use. We discovered that. But we did not do that because we thought there was an insurrection. We did it because there was every possibility that there might be the use of Federal troops in situations around the country at that time. And, indeed there was.

Now with respect to the Washington arrests, they had nothing to do with it.

Ms. ABZUG. You may continue to say that indeed there was, but I lived in this country during that whole period. And that is not what took place.

What took place was a lawless war that was being conducted and American citizens were exercising their fundamental right to petition for a redress of grievances and protested it. And they had a right to do that.

If the day comes when the Army interferes with that—as you attempted, but did not succeed—then we no longer have a democracy.

And we came very close, as Watergate indicated—very close. We do not want to have that happen again.

You and I differ, but we do not want that to happen again. We do not want our great country to be put in the position where there is a violation of the fundamental right to protest, to differ, or to have a different point of view.

That is all you did. You spied on people who differed with the operation of that war, and on people who felt it was illegal and should be stopped. And you utilized a process, a legal process of protest, to do so.

Mr. COOKE. Madam Chairwoman, I can only say that that issue was specifically litigated in *Laird* v. *Tatum*. The Supreme Court said there was no violation of first amendment rights in the activities the Army undertook.

Ms. ABZUG. As a lawyer, I must insist that that is not what that case holds. I don't know if you are a lawyer or not.

Mr. COOKE. I am. I think lawyers can, and apparently do, disagree.

Ms. ABZUG. Do you maintain any system of files on American citizens today in your Office of Security?

Mr. COOKE. Yes; we do. We maintain files on American citizens who are affiliated with the Department of Defense who have been granted security clearances and, as I indicated, members of congressional staffs or individual Congressmen's staffs at their request.

Ms. ABZUG. When you get Freedom of Information requests, do you review these files to see if there is any improper information in them? I know that you do not believe you improperly maintain anything, but I think there may be a few people who do improperly gather material. Do you do anything about reviewing that file or about seeing that any of that is deleted from the files before it is given to the requester?

Mr. COOKE. We do not. If there is a Freedom of Information request—and bear in mind that the Freedom of Information requests come in not to any one central point in the Department, but to a number of them—the files are not deleted because we felt the material was improper.

Ms. ABZUG. When you testified before this subcommittee last June, I think you stated that millions of names were being removed from the Defense Central Index of Investigations.

Mr. COOKE. That is true.

Ms. ABZUG. On the questioning, you stated that the removal does not mean elimination, but only transfer to a historical maintenance tape. Can these grandfather tapes be used to reconstruct references to now distorted, deleted files?

Mr. COOKE. No; they cannot. The Defense Central Index of Investigations is simply an index that contains no descriptive substantive information. It is a name, a social security number, a birth date. It does not contain information as to the substance of a file, but merely the location.

Ms. ABZUG. You have no codes to identify your files?

Mr. COOKE. The Defense Central Index of Investigations is an index of names or some other identifiable number. And the systems of records, the 21,038 that we published in the Federal Register, are systems of records accessible by the name of the individual or some other identifier pertaining to the individual.

Ms. ABZUG. So you could reconstruct references to now destroyed or deleted files because you have names and codes. Is that right?

Mr. COOKE. No. I mentioned the fact that since 1971 we have been destroying files in dead repositories. Many of the items in the Defense central index could relate to a system of files where there is simply no file behind it anymore because it has been destroyed. We have not had the chance to update it.

Ms. ABZUG. I cannot believe that the efficiency which you have exuded in so many different directions would not include your updating of files—particularly since you are so convinced that your files were properly maintained.

Mr. COOKE. I was not referring to updating files; I was referring to updating the Defense Central Index of Investigations by removing from that index files which have been destroyed by the various investigatory repositories.

Ms. ABZUG. Are you ever going to do that?

Mr. COOKE. We intend to do this. Out of an abundance of caution, we treated the moratorium request by Senator Mansfield and the Speaker as broadly as possible. One of the things that would prevent us from destroying the so-called grandfather tape is the moratorium.

Ms. ABZUG. Do you keep a record of what records you send to whom—such as the FBI, local and State police, the CIA, and so forth?

Mr. COOKE. Again, I say that we do not send, to my knowledge, investigatory information to local or State police.

I do not know whether we have, through the years, kept a record of information we have furnished to Federal investigative agencies.

Ms. ABZUG. You do give them to the FBI and the CIA, don't you?

Mr. COOKE. Yes.

Ms. ABZUG. And you don't know whether they give it to the local or State police, do you?

Mr. COOKE. I do not know. But let me say that since the Privacy Act, of course, we keep a record of information we have furnished under the Privacy Act to other agencies.

Ms. ABZUG. Could you tell us how many records created by the Department of Defense on U.S. civilians were disseminated to other agencies of the Federal Government?

Mr. COOKE. Since the Privacy Act?

Ms. ABZUG. Since the Privacy Act.

Mr. COOKE. We will undertake to do so.

[The material follows:]

Since the establishment of the Defense Investigative Review Council (DIRC) in 1971, no records created by DoD investigative agencies on non-DoD affiliated U.S. civilians during the late 1960's and early 1970's have been disseminated to other agencies of the Federal Government or elsewhere, primarily because they don't exist, or are not readily accessible. At that time the DIRC directed that active files be screened and purged of all information pertaining to non-DoD affiliated U.S. civilians. This action was carried out until the Mansfield-Scott moratorium. Further, the DIRC established procedures whereby all records maintained in dead storage (which were not subject to the general purge) are to be screened prior to their release at which time all "DIRC-sensitive" material is removed and destroyed (or segregated and sealed for subsequent destruction as a result of the Mansfield-Scott moratorium). Therefore, all requesters of DoD files, whether DoD or an outside agency, receive no records pertaining to non-DoD affiliated persons.

Since the establishment of the DIRC, no files have been created or are maintained on non-affiliated persons except as discussed below.

However, this procedure does not apply in those cases where files are requested under the Freedom of Information Act (FOIA) or the Privacy Act of 1974. If, in fact, a file is located either in active or dead storage, the content of the file, if otherwise releasable and not subject to the exemptions provided under the FOIA, is provided to the individual to which the file pertains. The DoD does not maintain statistics in such a way as to determine in these instances how many records pertaining to non-DoD affiliated U.S. civilians have been released to those individuals.

The very narrow exception to this general procedure concerns that information collected since the establishment of the DIRC as a result of the 9 DIRC approved special operations which may have involved non-DoD affiliated U.S. civilians. These approved operations concern those instances wherein a direct threat to the security of the DoD was perceived; that information would have been provided to the FBI and the other military departments but not to agencies outside the Executive Department.

Ms. ABZUG. You can also tell me about it before the Privacy Act—if they were so legally maintained.

Mr. COOKE. I am talking about information that we have furnished of affiliated U.S. citizens, not U.S. citizens who have no affiliation with the Department of Defense.

Ms. ABZUG. I am talking about records created by the Department of Defense on U.S. civilians, especially those created by Army intelligence, and disseminated to other agencies of the Federal Government.

Mr. COOKE. At the time of the civil disturbance files, records were sent. As I indicated, those files have been destroyed. We are not in the business of collecting information on nonaffiliated U.S. citizens. We have not been since 1971. So we obviously do not furnish them to anyone else and we do not have them ourselves.

We are talking about furnishing to other Government investigatory agencies information which we do have. If we have an employee to whom we gave a background investigation and he is considered for hiring by the ERDA, for example, we will, of course, make our investigatory file available for background investigation by that body.

Ms. ABZUG. How many files would you say you created under the Army intelligence program of nonaffiliated civilians?

Mr. COOKE. I have no estimate.

Ms. ABZUG. In an area?

Mr. COOKE. I would have to go back and check. We are talking about something which occurred circa 1968, 1969, and 1970. I do not have an estimate right now of the number of entries in the civil disturbance computerized data bank. I will try to get it.

Ms. ABZUG. I wish you would do that and supply that information for this committee.

Mr. COOKE. I will.

[The material follows:]

As you know, the Army files relating to non-DoD affiliated U.S. civilians which were collected during the late 1960's on those individuals who were believed at that time to have a potential for influencing civil disturbances, were destroyed by the Army in the spring of 1970. Therefore, we have no records to indicate how many files were created or to whom they may have been disseminated. However, I refer you to the testimony of Mr. Robert Froehlke, then the Assistant Secretary of Defense (Administration), before the Subcommittee on Constitutional Rights, Senate Judiciary Committee, in March 1971. Mr. Froehlke stated in part concerning the Army files that:

". . . Such files, as you know, were ordered destroyed in the spring of 1970. Therefore, it is impossible to examine such files to determine to what particular individuals and organizations they related or the specific contents of the files."

"Some civil disturbance type information was forwarded . . . to the U.S. Army Investigative Records Repository . . . In some cases, the information was integrated into files kept for other purposes at the IRR. Civil disturbance information was also disseminated to other command headquarters and to other agencies in the Federal Government, and in some cases, undoubtedly, to state and local agencies."

At that time, Mr. Froehlke also testified that the U.S. Army's Investigative Records Repository (IRR) contained 211,243 dossiers on organizations and 80,731 dossiers on personalities. On this point, I refer you to a report titled "Army Surveillance of Civilians: A Documentary Analysis," by the Staff of the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, August 1972, which among other things provided an analysis of the files maintained by the IRR:

". . . However, to determine how many of the IRR files relate to civilian political groups . . . it would be necessary first to subtract all those files relating to groups and individuals in other countries whose activities were or are considered to pose a threat to national security. A second discount would have to be made for various fronts for foreign intelligence agencies, and a third for those domestic organizations which actually seek to change our form of government by unconstitutional means." (page 22)

And further:

". . . Making estimates of the number of files on non-DoD affiliated persons on the basis of such fragmentary evidence is always hazardous. Undoubtedly extensive duplication existed and thousands of files were maintained on dead men. Discounting for these factors, however, one can guess that Army intelligence had reasonable current files on the political activities of at least 100,000 civilians unaffiliated with the armed forces." (page 96)

Ms. ABZUG. Namely, we would like to know how many records were created by the Department of Defense on U.S. civilians.

Mr. COOKE. Not affiliated with the Department?

Ms. ABZUG. Yes—not affiliated. I think we both understand that. We would like to know those created especially by Armv intelligence and which were disseminated to other agencies of the Federal Government. You say that you did not disseminate any to State and local law enforcement agencies. That is your testimony. But if you should discover that that is not correct, you can also supply for the record how many records were disseminated to agencies of State and local law enforcement.

Mr. COOKE. I will do so. I will examine particularly, Madam Chairwoman, the record in Senator Ervin's committee where I think there are some figures available. But I regret that I do not have them at my fingertips.

Mr. ABZUG. I regret that as well. If they are in the Ervin report, I should have had them.

What efforts are presently underway by the Navy and the Air Force to purge files of the nonaffiliated civilians?

Mr. COOKE. We have ceased our ongoing efforts which, as I testified, commenced in 1971. We stopped at the imposition of the moratorium. Under our construction of the moratorium, we cannot continue with the efforts which started almost 6 years ago.

Ms. ABZUG. Let's make sure we understand each other. I know about a moratorium. Now I also understood that all of you agencies were very eager to get rid of a lot of files and that there are some ongoing efforts underway to at least systematically go through files.

I just want to make sure that the record is correct on this. Is it not true that Navy files are being gone through in order to either determine whether to dispose of some of the files or pages, or that you have already purged some of them?

Mr. Cooke. We have purged no files or destroyed no files since the imposition of the moratorium. We have been faced with the problem occasioned by the moratorium in that files which we would not keep—employment applications, for example—we have had to keep.

We have in each department, to a degree, tried to segregate these files. I do not know the status in each department at this time. But let me assure you that none are being destroyed.

Ms. Abzug. I find it interesting that we keep hearing that nothing is happening and nothing is changed and you are not doing any of these things. And yet, every day, we get reports which indicate that even beyond this so-called deadline date, we have a continuation of activity.

Now one of the ways I think we can determine whether or not the law is being abided by is this notification provision. And we know that people have been notified that there were files that either were illegally obtained or unconstitutionally obtained or unnecessarily obtained—if that is the thing you wish to hang your hat on.

It seems to me that confidence in the Government requires that there be some process of monitoring—either a self-monitoring process which is to notify the individuals and to then allow them to act on their own as to what should be done, or some other monitoring of your process, such as a GAO monitoring.

Would you object to the GAO's monitoring your process of destruction should you undertake it?

Before you answer, I want you to be aware of what I told the Commissioner of Internal Revenue Service. Church and Pike did a wonderful job and performed a wonderful function for the country, for the Congress, and for the executive branch of the Government.

But this is a standing committee. We have a job to do. We continue to have the responsibility of oversight and legislation over the Freedom of Information and Privacy Acts and general information-gathering in Government agencies.

We cannot do our work effectively, in many instances, if files are going to be unilaterally destroyed while we are attempting to find the best process to eliminate some of the problems that have been created by the gathering of information.

So I am putting you on notice in the same way that I put the Commissioner. The destruction of files because of the completion of the work of two select committees may jeopardize the work of this Congress and its standing committees—this and other committees both in the House and the Senate.

Therefore, it would be more effective, it seems to me, if we could agree on a process that would be developed either administratively or by legislation.

I think notice is important; you all disagree. And that troubles me. I am troubled by it because I do not know what it means.

If, indeed, these files are about to be destroyed, these individuals who had these files developed around them and who don't know why and who have had this information passed along to other agencies are entitled to know. There may be things they want to straighten out. I think we owe that to those citizens.

I am troubled by the reluctance to notify. But we have to find some method of monitoring. We are not going to allow those people who col-

lected those files inappropriately, illegally, and improperly—whatever language you want to use—be solely responsible for that.

And you know that I think they were illegally collected and unconstitutionally collected. I think the record speaks for itself. The Rockefeller report, the Church report, the Pike report all speak for themselves. This is not my judgment; it is the judgment of those who sat in judgment.

And I want to know why you people are so afraid to let us have democracy in Government even now. I am troubled by it.

We will submit additional questions on the whole series of issues that are concerning us in this connection. But I would hope that you would rethink your position. You cannot want to destroy files unless there is a reason for it.

Mr. COOKE. May I make a comment?

Ms. ABZUG. Surely.

Mr. COOKE. The great bulk of the information subject to the moratorium does not relate to individuals at all. It relates to intelligence reports which are very ephemeral. We are trying simply through good housecleaning to destroy these which are of no use to anyone.

With respect to notification, I am well aware of the proposals of the Attorney General on the Cointelpro. And one of his criteria is that actual harm occurred to the individual. There was no actual harm; there was no compulsive action; there were no sanctions as a result of such files as we maintained at the time on nonaffiliated citizens. Those, I would hasten to add, we do not collect and we do not maintain anymore.

With respect to policing our house, as Chairman of the Defense Investigative Review Council, the Council has undertaken a series of unannounced inspections to insure that our requirements against collecting information on nonaffiliated citizens are followed. And, indeed, they have been.

I can only add one other thing. As I have said, I did not have the opportunity to read the Senate select committee report in any detail. I did look at something that applied to my own responsibilities. The select committee concluded that it appears that DOD directive 5200.27 and its enforcement are functioning effectively at this time to prevent the excess accumulation of files on American citizens.

I was heartened by that conclusion.

Ms. ABZUG. You ought to know whether it is true or not.

Mr. COOKE. I agree with it. I have reason to agree with it.

Ms. ABZUG. I don't know that you need somebody else to tell you. But if you do and if it makes you feel good, that is all right with me.

Mr. COOKE. I will be pleased to respond. Thank you.

Ms. ABZUG. Thank you for coming. The subcommittee is adjourned.

[Mr. Cooke's prepared statement follows:]

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PREPARED STATEMENT OF DAVID O. COOKE, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR ADMINISTRATION

Madam Chairwoman, Members of the Subcommittee:

I appreciate the opportunity to appear before you today to present the views of the Department of Defense on H.R. 169 and H.R. 12039. Inasmuch as the provisions of H.R. 169 have been included in the more comprehensive provisions of H.R. 12039, my remarks will address the latter bill.

H.R. 12039 consists of five amendments to the Privacy Act of 1974. Of the five amendments, amendments (4) and (5) relate solely to the operations of the Central Intelligence Agency and the Secret Service. Consequently, the Department of Defense will confine its comments to amendments (1) and (2). We are concerned with amendment (3) only because it precludes a law enforcement agency from taking an exemption to Amendment 2.

Amendment (1) would permit the individual to request the Agency to correct his record if the individual believes that the record is not "legally maintained." Should the Agency determine that the record is not legally maintained, or if the record is not accurate, relevant, timely or complete, the Agency may correct the record, or expunge, update or supplement any parts thereof. As this amendment merely adds explanatory language to the procedures for correcting records, the Department of Defense has no objections.

Amendment (2) would require that certain classes of individuals be notified by the Agency of their rights under the Freedom of Information and Privacy Acts. It would further give that person the "option of requiring that Agency to destroy such copies of each file or index in its possession." The following categories of persons would be entitled to notification, and, at their election, to destruction of their records:

(A) Any sender or receiver of a communication which was intercepted or examined by the Agency without a search warrant, or without the consent of both parties.

(B) Any occupant, resident or owner of any premises or vehicle which is searched by the Agency without a search warrant, or without the consent of such person.

(C) Any person who is the subject of a file or named in an index maintained in connection with Operation CHAOS, COINTELPRO, or "The Special Service Staff."

As Category (C) above, Operations CHAOS, COINTELPRO and "The Special Service Staff," relates to the Central Intelligence Agency, the Federal Bureau of Investigation and the Internal Revenue Service, the Department of Defense defers to the comments of those agencies. However, the Department has noted that the decision of the Attorney General to notify persons who were subjects of the Operation COINTELPRO is dependent upon a showing that the specific COINTELPRO activity was improper, that actual harm may have occurred and that

the subjects were not already aware that they were the targets of such activity.

As for including the categories of persons described in (A) and (B) above, the Department of Defense is opposed to amendment (2) for a number of reasons:

The kinds of records maintained by the Department of Defense under categories (A) and (B) above are clearly distinguishable from the kind of activities which had been directed against certain individuals by the Federal Bureau of Investigation, the Central Intelligence Agency and the Internal Revenue Service. In the course of carrying out investigations, the Department may engage in the interception of communications at the request of one of the parties but not both parties. Under such circumstances, this interception is not a violation of law and is not a basis for civil action for damages. Chapter 119 of Title 18 U.S.C. expressly provides that it shall not be unlawful to intercept a wire or oral communication where "one of the parties to the communication has given prior consent to such interception." U.S. v. Rich, 1975, 518 F.2d 980. Bakes v. U.S. 350 F. Supp. 547, affirmed 748 F. 2(b) 1405. Moreover, consensual interceptions have been ruled as not violating the accused rights of privacy under the Fourth Amendment. See Com. v. Donnelly, Pa. Super. 1975, 336 A. 2d 632. Consequently, no harm has occurred and there is no basis for providing the unconsenting party with the option of requiring the destruction of the records.

Amendment (2) also fails to take into account that not all searches of premises or vehicles without a search warrant or the consent of the resident or owner are illegal. For example, the Commanding Officer of a military unit may authorize, on probable cause, a search of the property of a person subject to military law or a search of military property. Within the civilian community, law enforcement officers are entitled under certain circumstances to the search of premises or vehicles without a search warrant, when the search is for instrumentalities or fruits of the crime, property the possession of which is itself a crime, or evidence which there is reason to believe will otherwise aid in a particular apprehension or conviction. Again, these searches, and the records of such searches, are clearly distinguishable from the particular tactics that were directed at individuals or organizations under COINTELPRO.

The notification requirement would adversely affect the ability of law enforcement agencies to intercept criminal conversations where one party has given his consent. Of course, if neither party consents the Department would be required to obtain a warrant as required by Chapter 119 of Title 18 U.S.C. For example, consensual eavesdrops are used in narcotics related offenses in which a consenting source of information voluntarily allows interception of communications between himself and suspected drug dealers. The interception of these conversations serves not only to provide documentary evidence in subsequent court proceedings, but also serves

as a means of protecting the sources during his contact with potentially hostile subjects. But, under the terms of H.R. 12039, suspected drug dealers could not only determine the identity of the source who contributed the information, but demand the destruction of the evidence gathered by the intercept.

There are other areas of law enforcement in which the notification and destruction provisions would also significantly hamper what are now successful and legal techniques. For example, an extortionist's letter sent to an intended victim could be examined by the law enforcement agency, but unless the extortionist consented, he could demand to be notified of his rights and could direct the destruction of evidence which would otherwise lead to his indictment. Likewise, persons who receive bomb threats, threatening telephone calls or ransom demands in a kidnapping case would be reluctant to give consent to the interception of a call, knowing that their cooperation with law enforcement authorities would be revealed upon demand.

Separate and apart from these considerations is the fact that Amendment (2) unjustifiably extends the Privacy Act to foreign nationals and to associations and corporations,both domestic and foreign. Presently, the Privacy Act extends protection to "a citizen of the United States or an alien lawfully admitted for permanent residence." The Department of Defense sees no justification for being required to disclose its investigative techniques to foreign

persons, such as a foreign intelligence agent. Counterintelligence operations of the Military Departments may well involve the collection of information through the interception of communications between witting and consenting sources of information and a known hostile intelligence agent. Existing practices with respect to authorized searches, mail covers, and the interception of communications with the consent of one party would virtually cease if there is a requirement that the hostile agent be notified of this practice. Even more unrealistic is the proposal that the investigating agency be required to destroy information about a hostile agent when he so directs. Consequently, broadening the scope of the Act to include other than United States citizens would seriously jeopardize our intelligence efforts and thereby cause irreparable damage.

Finally, Amendment (2) raises a number of questions of interpretation. The wording of the proposed subsection 12A in Amendment (2) creates ambiguity as to which systems of records it applies. Is it meant to cover only those systems of records which are clearly delineated in the current Privacy Act, or all records of any nature which reflect the activities described in the Bill without regard to retrievability? The general tenor of the Bill strongly suggests that it is aimed at all files, however they may be constituted and whatever their nature. Amendment (2) is also drawn in such a way that it would apply to records created before the effective date of the Privacy Act of 1974. If this interpretation is correct,

historical files in the Government Archives, no matter how old, would have to be examined to determine whether any information contained therein is subject to the requirements of the Bill. A question also arises as to whether it is intended that documents pertaining to categories (A) and (B) must be destroyed by the Agency at the subjects insistence, whereas all other documents covered by the Privacy Act will be destroyed only if the Agency, in its exercise of administrative discretion, decides that it is in the public interest to do so.

In summary, the Department of Defense has made a good faith effort to insure the proper balancing of interests in its implementation of the Privacy Act. However, because of its overbreadth, we cannot support the Bill in its present form.

[Whereupon, at 12:50 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—STATEMENT OF AMERICAN CIVIL LIBERTIES UNION

Statement of MORTON H. HALPERIN,

American Civil Liberties Union

before

The Subcommittee on Government Information and Individual Rights, of the Committee on Government Operations, U.S. House of Representatives, on H.R. 12039

August 3, 1969

Madam Chairwoman,

I am pleased to appear today on behalf of the American Civil Liberties Union to express our strong support for H.R. 12039. We think this is a minimal first step that the government can make to begin to redress the harm caused by intelligence agencies in violating the rights of Americans.

In our view, much more should be done. A special prosecutor should be appointed with the power to investigate the programs identified in your bill and other activities to determine if criminal prosecutions should be brought. Charters should be adopted for each of the agencies which would prohibit any surveillance of Americans except when they are suspected of violating the criminal law and which would prohibit such inherently intrusive techniques such as wiretaps and informers in political organizations. Changes in civil procedures are needed to make it easier for individuals whose rights are violated to successfully bring civil suits. All of this and much more is needed to bring the intelligence agencies under control.

I recognize that many of these issues are not within the jurisdiction of this subcommittee. I mention them not to denigrate the value or importance of H.R. 12039, but simply to indicate that it should be a relatively non-controversial first step.

As I understand, the Justice Department and the IRS have agreed to notify some of the victims of COINTELPRO and "the Special Services Staff." This partial notice is far from adequate. The victims of COINTELPRO are to be notified only if, in the judgment of a Justice Department committee, the activity was improper, actual harm may have occurred, and the subjects are not already aware that they were the targets of COINTELPRO activities. In my view, any political activity directed by the FBI against American citizens is improper. This Justice Department committee is not in a position to determine if harm actually occurred. Only the individual involved can make that judgment. Moreover, he or she is entitled to know that the FBI was plotting even if the plotting did not succeed. Finally, it makes no sense to guess whether someone knows that he or she was a victim.

As far as the IRS is concerned, the notice is to occur only if there was an audit triggered by the Special Services Staff. This limitation also is inappropriate. An individual is entitled to know if information was gathered even if an audit did not result.

I see no reason why they should not be required to notify all of the victims of these programs. They are a well-identified group of people, the agencies admit that the programs were improper, and the agencies assert that the programs have ended.

The same situation exists for the CIA CHAOS program. All of the files of that program are in one place. There is an index of all names contained in the CHAOS documents and microfiche including names and addresses.

Individuals who write to the CIA, the FBI or the IRS under the Freedom of Information Act are eventually informed as to whether or not their names appear in the files of these programs. Notice would simply mean that the individual would not have to suspect that he or she was listed and be paranoid enough to write in. There are, I am sure, many law abiding citizens who would not even begin to guess that they were subject to surveillance.

Section A poses some separate problems. I see no difficulty with the CIA mail opening program. There, as with CHAOS, the program is conceded to be improper and has come to an end. There is an index of all those whose letters were opened, and the CIA advises those who write in under the FOIA or Privacy Act if their mail was opened. I see no reason why all of these people should not be notified.

The National Security Agency cable intercept program is somewhat more complicated. I would suggest that the appropriate

persons to be notified are those whose names were on the watch lists supplied to NSA by other agencies.

There does not appear to be any clearly identifiable group of people who were the subjects of electronic surveillance by the FBI. Surveillance placed on individuals who are not associated with a foreign power is illegal under the Supreme Court decision in Keith (U.S. v. U.S. District Court 407 U.S. 297 (1972)) and the Court of Appeals for the District of Columbia decision in Zweibon v. Mitchell 516 F.2d 594. However, the precise contours of these decisions are not established. Some discretion, therefore, in this one case probably has to be left to the Justice Department. I suggest that the Department be asked to review all of the authorization memoranda and notify those who were wiretapped without any belief that they had a connection with a foreign power.

Madame Chairperson, I have reviewed the prepared statements of the administration witnesses in opposition to H.R. 12039. Their main objection appears to be that they may not have current addresses for some of the people on the various lists. Certainly this is not an argument for sending out letters to each individual for whom the agency has an address, perhaps with special instructions to the postal authorities to make every effort to deliver the letter. Those letters which are returned as undeliverable should be turned over to a designated individual along with those names and identifying information for which the agency

has no address. The individual designated for this purpose should be a lawyer in private practice who would act in effect as the lawyer for a class of individuals designated in a class action suit. The responsibility of this individual would be to make every reasonable effort to notify individuals on the various lists. This process would avoid the problem of the intelligence agencies conducting new investigations.

I would like to end as I began by noting that the ACLU views this as an important but very modest step. That it is being resisted shows how little the intelligence agencies have learned about their obligations to obey the Constitution and how important it is for Congress to act.

APPENDIX 2.—INTERNAL REVENUE SERVICE SUBMISSION TO CHAIRWOMAN ABZUG'S QUESTION

QUESTION 4 (Abzug): "Will you supply them for the record, please /any written instructions used by IRS employees in processing inquiries from a person as to whether such person is included in the SSS files/." (page 53 of transcript)

RESPONSE

Attached are copies of the instructions issued by the Service relating to the processing of FOI/Privacy requests. These include the following items.

a. Policy Statement P-1-192 - Freedom of Information Act Requests

b. Staff Instruction for handling Freedom of Information requests

c. Checklist for Response to FOI Act Request

d. Disclosure of Official Information Handbook - Section (21)00

e. Manual Supplement 12G-92 - Disclosure of Material Under Freedom of Information Act

f. Manual Supplement 12G-126 (Sections 1-6 only) - Access and Amendment and Accounting of Disclosures--Privacy Act of 1974

g. Manual Supplement 12G-135 - Treatment of Requests for Records - The Privacy Act of 1974 and The Freedom of Information Act

h. Manual Supplement 17G-292 CR 12G-138 - Processing and Accounting for Requests for Material Under the Freedom of Information and Privacy Acts

i. Manual Supplement 12G-139 - Effect of the Privacy Act of 1974 on Disclosure Instructions in IRM 1272, Disclosure of Official Information Handbook

j. 26 CFR Part 601 - Statement of Procedural Rules (new FOI regulations for IRS)

P–1–191 (Cont.)

appointment of key officials who represent the Service to the public, publication of statistics, etc. Issuance of public announcements covering these actions should be made when they can contribute to effective tax administration.

P–1–192 (Approved 3–2–73)

Freedom of Information Act Requests

The Internal Revenue Service will grant a request under the Freedom of Information Act (5 U.S.C. 552) for a record which we are not prohibited from disclosing by law or regulations unless: (a) the record is exempt from required disclosure under the Freedom of Information Act; and (b) public knowledge of the information contained in such record would significantly impede or nullify IRS actions in carrying out a responsibility or function, or would constitute an unwarranted invasion of personal privacy.

The administrative cost and impact on operations involved in furnishing the requested record (s) shall not be a material factor in deciding to deny a request unless such cost or impact would be so substantial as to seriously impair IRS operations.

(P–1–193 — P–1–211 are reserved)

Management Information

P–1–212 (Approved 8–11–72)

Useful information necessary for effective management

At all levels of the Service, officials having managerial or executive responsibilities must have useful information in order to make decisions and plan future programs and activities. A prerequisite to determining information needs is to identify and define objectives and goals; to the extent practicable, objectives and goals should be expressed in measurable or quantifiable terms.

Line and functional officials will secure information required to make timely decisions in planning, scheduling, evaluating alternatives, monitoring progress toward program objectives, measuring performance, and detecting situations requiring corrective action for activities within their responsibility and authority. To this end, such officials shall establish formal reporting requirements wherever appropriate.

Reported information shall reflect progress toward established objectives and goals and, to the fullest extent possible, be integrated into single reporting systems that will provide for the selection, extraction, and use of data by various organizational components as is appropriate to their needs. As a part of any such integrated system, detailed reporting (as opposed to summary reporting) will normally be confined to the level of demonstrated utility.

P–1–213 (Approved 8–11–72)

Information resources to be carefully managed

Information is a resource to the manager in the same sense as personnel, space and equipment are resources—all contribute to effective program accomplishment. Management information, like other resources, is costly. It must therefore be carefully managed, and its acquisition, processing and distribution fully justified.

Planning for information needs and supporting resources will accompany program planning. Appropriate consultation and coordination of plans or changes to reports (e.g. data elements) will be conducted among all organizations having a role in the design and implementation of any

DRAFT

STAFF

INSTRUCTION

FREEDOM

OF

INFORMATION

BRANCH

MARCH 17, 1975

FREEDOM OF INFORMATION

Subjects:

1. Introduction
2. Receipt and Control of Correspondence
3. Preparation of the FOI Correspondence Log
4. FOI Response Date Analysis
5. Extensions of Time
6. Processing a Request
7. Preparation of Response
8. Estimates, Fees and Invoices
9. Correspondence Filing Procedures

Exhibits:

1. Form 7000, Correspondence Control
2. FOI Correspondence Control Log
3. FOI Response Date Analysis Form
4. Advice of Response Date
5. Notice of Time Extension
6. Invitation To A Voluntary Extension Of Time
7. Notice 393
8. Form M-6001, Freedom of Information Invoice
9. Form M-5980, Freedom of Information Hand-Carry

FREEDOM OF INFORMATION

1. Introduction

A. In processing Freedom of Information Act Correspondence, the Statute, 5 USC 552, and other applicable statutes are paramount. The Regulations appearing at 31 CFR Part 1, and other applicable regulations constitute a secondary level of authority. The third level of authority consists of IRM 1272 (21) and other applicable manual instructions.

B. These staff instructions are prepared to provide for the orderly processing of Freedom of Information Act Correspondence within the Freedom of Information Branch.

2. Receipt and Control of Correspondence

A. Mail will be picked up at Post Office Box 388 daily at approximately 1:00 PM.

B. All mail received will immediately be stamped with the current date. The Branch Secretary will deliver any responses to our inquiries directly to the responsible technician. The balance of the mail will then be delivered to the Chief, Freedom of Information Branch for review and assignment.

C. The Chief, Freedom of Information Branch, will remove any items which can be responded to by the Freedom of Information Reading Room, any misdirected appeals intended for the Disclosure Division, Office of Chief Counsel, or any other items which do not constitute proper work assignments for the Branch.

D. Items which do not constitute Freedom of Information Act Correspondence, but which are, nevertheless, proper work assignments for the Branch will be marked "Non-FOI" and will be assigned to an appropriate technician. "Non-FOI" items (intra-agency memoranda, reports, etc.) will be handled in accordance with existing guidelines and are not subject to these instructions.

E. Freedom of Information Act Correspondence will be marked "FOI" and an appropriate assignment will be indicated. Cases will be returned to the Branch Secretary.

F. The Branch Secretary will prepare a correspondence control, Form 7000, for each FOI case. The symbol FOI will be placed in the upper right portion of the "From" box. The Response Due Date, computed as the tenth workday from the day of receipt will be entered in the "Follow-Up Date" box. A number, consisting of the year digits (ie 75, 76 etc.) plus an ascending count beginning with 1 for the first case numbered that year, will be placed in the "Control No." box. This Control Number will be the identifier for all future items associated with that case. It should be placed in the upper right corner of the correspondence itself and should subsequently be shown on responses, bills, acknowledgements, related forms, or any other items which are related to the case. See Exhibit 1, for preparation of Form 7000.

G. The green copy of Form 7000 will be maintained as an open control file in alphabetical order by name of the requester. As cases are closed, the Form 7000 will be removed from the open file and used for the closed control file.

H. The Branch Secretary will prepare an entry in the FOI Correspondence Control Log, showing the Control Number, Name of Requester, Name of Assigned Technician, and the Response Due Date. See instructions for the preparation of the FOI Correspondence Control Log and Exhibit 2.

I. The Branch Secretary will place each item of FOI Correspondence in a separate folder which will permanently house the records associated with that request. Each folder should be marked on the tab with the FOI Control Number and the name of the requester. The case will then be delivered to the assigned technician.

3. Preparation of the FOI Correspondence Control Log

The FOI Correspondence Control Log will serve to monitor cases in inventory and to conveniently record information which will subsequently serve as the basis for required reports. The information called for will be inserted as follows:

A. The Control Number, Requester's Name, Technician Assigned, and Response Due Date will be entered prior to delivery of the case to the technician. The Control Number will be simultaneously entered on the facing page for convenience in continuing the entries.

B. The Advice Date is the date on which the Advice of Response Date is mailed. When entering the Advice Date, the Branch Secretary should ascertain that the Response Date of which the requester is being advised is the same as that which is entered in the Due Date column. In a few instances the Advice of Response Date will indicate a later date than that originally computed as the Response Due Date, and this later date should be inserted in the Response Due Date Co-

lumn. If the technician determines that no Advice of Response Date should be issued, he should enter N/A in the Advice Date Column.

C. The Date Routed is the date on which a case leaves the Freedom of Information Branch to be routed for concurrence or signature. If a case is returned to the Branch for correction the Date Routed should be lined through and a new date inserted whenever the re-written response again leaves the Branch.

D. The Extension Date is the Extended Response Date, to be entered by the Branch Secretary whenever a Notice of Time Extension is mailed. Whenever an Invitation To A Voluntary Extension Of Time is mailed, the date mailed will also be entered in the Extension Date column, prefaced by the letter V.

E. The Date Closed is entered by the Branch Secretary when a final response is mailed. Care should be taken that a case is not marked closed in error, since a partial response may sometimes be made. In case of doubt the technician's advice should be requested.

F. When a case is closed, the response should be analyzed and a check mark placed in the appropriate box identified by the letter C, G, D, P, or N. Only one of these boxes can be correct for any case. The letter C is checked when a case is closed by correspondence which neither grants nor denies nor states the non-existence of the requested record; examples of C Cases are those in which the response advises that the request must be perfected in order to be processed, an estimate of costs is provided, or a statement that no records could be located is made. The letter G is checked when a case is closed by granting the records requested and includes cases in which the requester stated that deletions were permissable or such deletions are limited to identifying details or information whose disclosure is prohibited by statute. The letter D is checked when the response consists of a complete denial and no requested records are made available. The letter P is checked when the response partially grants and partially denies a request, and includes instances in deletions other than those specified for letter G are made. The letter N will be checked when a response states that the requested records do not exist.

G. Whenever Exemptions are cited in the response check the boxes for all the Exemptions mentioned. If Exemptions are cited, make certain that the letter marked in the previous entry was D or P; the use of exemptions with letters C, G, or N would indicate a reporting error and the assistance of the technician should be requested.

H. Whenever letters D or P have been checked and one or more Exemptions have been checked, record the name of the official who signed the denial letter.

I. Whenever an invoice has been prepared to deposit a prepayment or to request payment of fees, enter the amount of the invoice in the column for Amount Billed. If materials are provided to a requester without charge, analyze the response or request the technician's advice in order to determine the appropriate entry as W-I (Fee Waived - Indigent), W- PI (Fee Waived - Public Interest), or W-SB (Fee Waived - Small Balance).

J. Whenever Disclosure Division requests the file in order to process an Appeal, enter in the Appeal Column, the date on which we deliver our file.

K. The Remarks Dates Column exists to permit expanding the Log to include any information necessary to be aware of the location of our files and the purposes to which they are put. Any information which should be recorded and for which no specific place has been provided can be written on blank sheets kept at the back of the Log in date order. Merely record in the Remarks column the date under which the relevant entry appears. Appropriate items for such remarks are the filing of a suit, a request for the file by some other office, a Congressional inquiry concerning the case, etc.

4. FOI Response Date Analysis

A. Immediately upon receipt of FOI Correspondence the technician should analyze the letter to determine whether a valid Freedom of Information Act request for access to records exists. An FOI Response Date Analysis Form (See Exhibit 3) should be prepared. Based upon the determination reached, an Advice of Response Date (See Exhibit 4) should be prepared, or alternative action should be taken.

5. EXTENSIONS OF TIME

A. All cases in which a determination has been made not to issue an Advice of Response Date are assumed to be disposable prior to the expiration of the due date.

B. The Branch Secretary will review the FOI Correspondence Control Log daily and alert technicians to any due dates or extension dates about to expire. It is the technician's primary responsibility, however, to take necessary action to respond, or extend the due date as is appropriate.

C. A Notice of Time Extension (See Exhibit 5) may be used whenever the circumstances described in 31 CFR Part 1, Section 1.5(i)(1) exist.

D. Whenever the necessary circumstances for the use of a Notice of Time Extension do not exist, or the Notice of Time Extension has already been employed, an Invitation To A Voluntary Extension Of Time (See Exhibit 6) may be used.

6. PROCESSING A REQUEST

Processing a Freedom of Information Act request for access to records consists of the following steps:

A. Determining the records which are desired. Few persons lacking experience with Service records can be expected to know precisely what they are seeking or how to identify it. The technician must use insight in determining, on the basis of his experience or with the assistance of specialists familiar with particular types of records, what records are responsive to the request. Requests which appear to be unreasonably broad may simply reflect a lack of sophistication on the part of the requester. It may at times be necessary to make telephone contact with the requester in order to correctly determine his interests. The technician should attempt to be helpful and explore ways to satisfy the request at the minimum expence both to the requester and to the Service.

B. Locate the materials. The requested records must be obtained in order to either provide requested copies or establish their exemption. Whenever physically possible to do so, requested records should be copied and incorporated into the request file, unless the requested materials can be identified by citations and sample pages, as may be the case with extensive statistical reports. Upon closing a case, the case file should contain copies of the records granted (unless readily identified by citation) and copies of any records denied, each type being appropriately marked.

C. Determine whether the records have previously been made available, or if not previously made available whether they can now be made available. Research may include the FOI Card Index, prior case files, the Reading Room Card Catalog, internal analysis of the record itself or inquiries with specialists familiar with the uses of the record. It should be remembered that while prior release may be interpreted to warrant continued release, prior denial does not necessarily mean that the record cannot now be released. Records should constantly be re-evaluated in the light of the latest developments in FOI litigation.

D. Preparation of a response. The response prepared constitutes the technician's recommendation as to whether the records should be granted or denied, unless the response is prepared at the direction of a superior.

E. Maintenance of history sheets. Except for the simplest cases which preclude the need for a record of actions taken on a request, the technician should maintain as a part of the file, a record of every meaningful action taken in working the case. Appropriate entries in the history sheet include actions taken to secure the records, description of search efforts, names and dates pertinent to requests for records from other functions, discussions pertaining to the resolution of the request, contacts with the requester, basis for computing costs, and any necessary insight into the reasons for recommending release or denial of the record.

F. Verification of review of investigatory files. All statutory prohibitions against disclosure must be observed, necessitating that investigatory files must be reviewed to ascertain that they do not contain prohibited tax information concerning other taxpayers, information which would invade the privacy of third parties or information which would identify confidentail sources or informants. The history sheet should include a state-

ment that the required review has been made in order that subsequent reviewers need not make a detailed re-examination of the file.

G. Editing the records. Whenever records must be edited prior to release, each page from which information has been deleted must be stamped or inscribed with a statement to the effect that matters exempt from the disclosure requirements of the Freedom of Information Act have been deleted from that page.

7. Preparation of Response

A. Responses should be short and direct to the extent possible and appropriate. Notice 393 (Exhibit 7) must be enclosed with all denials and with grants of records from which deletions have been made. Notice 393 also accompanies an Invitation To A Voluntary Extension Of Time and may also be useful in other situations. Whenever Notice 393 is used, a statement should be embodied in the response calling attention to Notice 393.

B. Requests which are granted in their entirety and which do not require any explanatory correspondence, may be answered by the use of Form M-6001, Freedom of Information Invoice (Exhibit 8) alone. Records can be transmitted using Form M-6001 without any charge by noting that fees have been waived in the amount due box when appropriate.

C. All responses should be prepared for the signature of the Chief, Disclosure Staff, without typing a name. Responses which grant the request in its entirety, consist only of materials previously made public, generally available to the public, declassified, or otherwise considered to be routine releases not requiring routing for concurrence may be signed by the Chief, Freedom of Information Branch, on behalf of the Chief, Disclosure Staff.

D. All responses should have the FOI Control Number entered next to the preparer's name on all carbon copies.

E. Each proposed response should be accompanied by a Form M-5980 (See Exhibit 9). The FOI Control Number should be placed in the upper right corner of the form. The form should show the Response Due Date or the Extended Due Date. A statement should be included in the remarks section identifying prior releases of the records.

or explaining the basis for the release. In the event of an initial release of a particular type of record not previously available to the public, this fact and its significance should be stated. Form M-5980 should be produced as an original and a carbon copy. Whenever a case leaves the Freedom of Information Branch, the carbon copy will be retained in a tickler file in numerical order until the case is returned for correction or mailing, at which time the carbon copy may be destroyed. This tickler will enable us to know which cases are in float and assist us intracing their whereabouts when necessary. Upon closing the file, the original M-5980 becomes a permanent part of the record. Thus, a new Form M-5980 must be prepared every time a case leaves the Freedom of Information Branch.

8. Estimates, Fees and Invoices

A. Estimates are based upon opinion, roughly made from incomplete or imperfect data; they are not expected to be precise. Estimates should be as correct as the experience of the technician, or the subject area specialists, will permit without the expenditure of time or effort other than simple inquiry of persons believed familiar with the subject. They should be stated as approximations and should include a statement that actual expenses may exceed estimates which cannot be considered as offers to perform the work at the estimated cost. There should be no charges for making an estimate and no attempt should be made to determine the availability of records which have not been previously collected or analyzed in response to a request for an estimate.

B. Fees will be fairly but firmly computed in accordance with the requirements established in the regulations, but care should be taken that requesters are not subjected to unnecessary charges nor spared the burden of appropriate charges on the basis of a technician's failure to correctly record costs encountered.

C. Requests for records processed by the Freedom of Information Branch will seldom involve solely records on hand within the Branch, on the shelves of the Reading Room, or so readily available that no search costs are involved. Care should therefore be taken that search charges are included in the fees whenever appropriate.

D. Invoices should not normally be made for a payment due of less than one dollar. Where the balance due is under a dollar and a letter is otherwise necessary, the invoice may be omitted. Where the balance is under one dollar and no letter is necessary the invoice form may be used as a transmittal showing no charge.

E. Form M-6001 will show the FOI Control Number for the case in the box which calls for Invoice Number.

F. Forms M-6001 will be distributed as follows:

White - Always goes to the requester.

Green - Goes to Fiscal Section if the amount due is $50.00 or more, or if needed to accompany a partial payment. Otherwise destroy.

Yellow Goes to requester if there is an amount due. Goes to Fiscal Section if the amount submitted with the request results in full payment.

Pink - Always retain in our case file.

Gold - Destroy.

9. Correspondence Filing Procedures

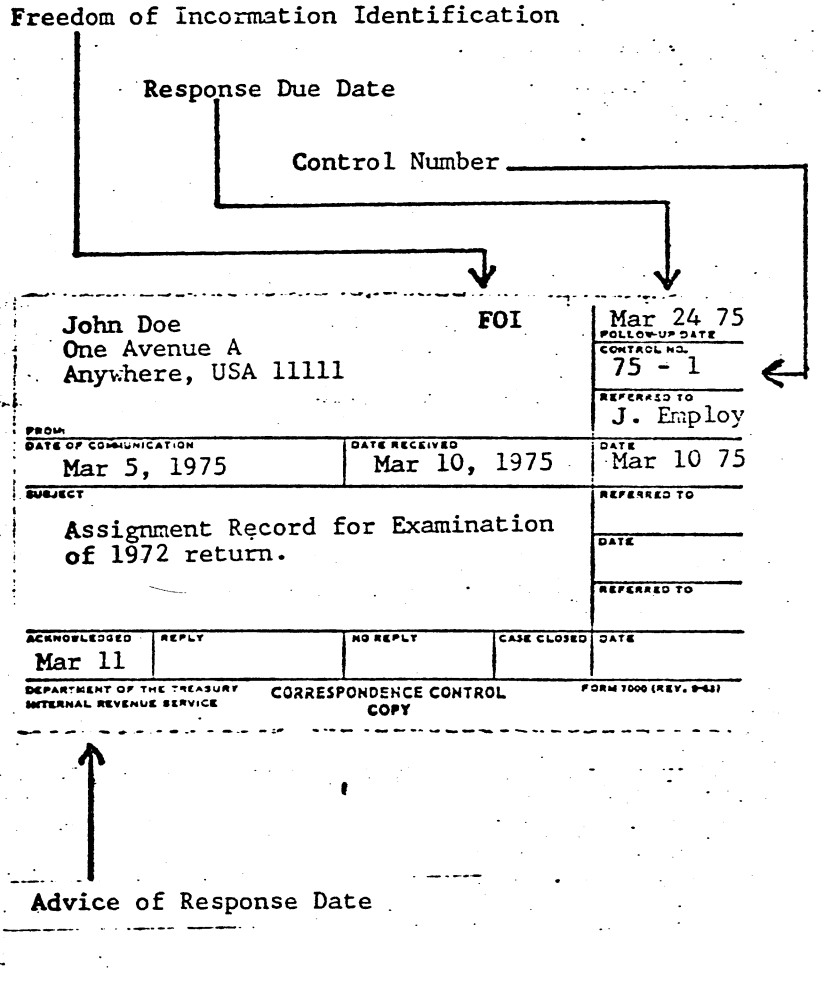
A. Upon mailing a response the Branch Secretary will post the necessary information to the FOI Correspondence Control Log immediately, and the forward the file to the technician.

B. The technician will remove his spindle copy, post any personal controls he may maintain, and analyze the case to determine if a 5 X 8 card should be prepared for the FOI Index. Such a card should be prepared whenever an initial grant of a record which may be the subject of subsequent requests has been made. The card should contain the identifying details for the record cross referenced as appropriate, a statement that the request was granted or denied, the date of the action and the Control Number of the case. The file should then be returned to the Branch Secretary.

C. The former numbering system coding cases as Grants, Denials, etc., will be continued only for those cases which were received prior to establishment of the FOI Correspondence Control Log. Cases received after the Log was established and which received a Control Number will be filed numerically by that designation.

D. Whenever a closed case is removed from the file for any purpose a Charge Card should be put in its place, showing the Control Number, the date, and name and office of the user. If the case file is removed from the direct control of the Disclosure Staff, as when delivered to Disclosure Division for an Appeal or if delivered to any other office, a permanent entry to that effect should also be made in the FOI Correspondence Control Log.

Exhibit No. 1


Freedom of Incormation Identification
Response Due Date
Control Number
John Doe
One Avenue A
Anywhere, USA 11111
FOI
Mar 24 75
FOLLOW-UP DATE
CONTROL NO.
75 - 1
REFERRED TO
J. Employ
FROM
DATE OF COMMUNICATION
Mar 5, 1975
DATE RECEIVED
Mar 10, 1975
DATE
Mar 10 75
SUBJECT
Assignment Record for Examination of 1972 return.
REFERRED TO
DATE
REFERRED TO
ACKNOWLEDGED
Mar 11
REPLY
NO REPLY
CASE CLOSED
DATE
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CORRESPONDENCE CONTROL COPY
FORM 7000 (REV. 9-63)
Advice of Response Date

EXHIBI

CON-TROL NO.	CLOSED BY					EXEMPTIONS CITED									DENIAL SIGNED BY	AMOUNT BILLED	APPEAL	REMARKS DATES
	C	G	D	P	N	1	2	3	4	5	6	7	8	9				

CON-TROL NO.	REQUESTER's NAME	TECHNICIAN ASSIGNED	DUE DATE	ADVICE DATE	DATE ROUTED	EXTEN-SION DATE	DATE CLOSED

EXHIBIT

REQUESTER_____ DATE PREPARED_____

TECHNICIAN_____ RECEIPT DATE_____

FOI CONTROL NUMBER_____ RESPONSE DATE_____

1. Was the request made in writing and signed by the person making the request?

   Requirement Waived_____ Yes_____ No_____

2. If the request is made on behalf of a taxpayer, is an adequate power of attorney present?

   Not Applicable_____ Yes_____ No_____

3. Does the request state that it is made pursuant to the Freedom of Information Act, 5 USC 552, or 31 CFR Part 1 ?

   Requirement Waived_____ Yes_____ No_____

4. Was the request addressed to the office or officer of the constituent unit to which the request is of paramount concern?

   Yes_____ No_____

5. Does the request reasonably describe the records requested?

   Yes_____ No_____

6. Has the request been phrased so as to reasonably avoid the involvement of voluminous records, the creation of an undue burden, or unwarranted interference with the operations of the Service?

   Yes_____ No_____

7. Can the requested records be reasonably presumed to exist and to be in the possession of the Service?

   Yes_____ No_____

8. Does the request set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted?

   Yes_____ No_____

9. Does the request clearly indicate whether inspection is desired or copies are desired without prior inspection of the records?

Requirement Waived_____ Yes_____ No_____

10. Does the request clearly indicate that the requester is aware of the possible extent of charges and makes a firm agreement to pay the fees for search and duplication?

Requirement Waived_____ Yes_____ No_____

or

Does the request include a petition that the fees be reduced or waived and include a statement of justification in support of such request?

_____

or

Does the request ask that an estimate of costs be provided before further action is taken?

_____

or

Does the anticipated expense exceed $50.00 or exceed any limitation set by the requester?

_____

Check the appropriate determination:

_____Analysis of the above factors indicates that a valid request for records has been received and the requester is being advised of the response due date.

_____No Advice of Response Date is being initiated because the simplicity of this request permits an immediate response.

_____No Advice of Response Date is being initiated because analysis of the request indicates that the requester did not intend to submit a request under the Freedom of Information Act and it is anticipated that a satisfactory response can be made before the response date passes.

_____Analysis of the above factors indicates that a valid request under the Freedom of Information Act does not exist and this case will be closed prior to the expiration of the response date by advising the requester of the actions necessary to perfect the request, or the basis for non-compliance with the request.

ADVICE OF RESPONSE DATE

Date:

Person to Contact:

Contact Telephone Number:

Control Number:

Your Letter Dated:

Anticipated Response Date:

Your request for access to records of the Internal Revenue Service has been received and appears to satisfy the requirements of 31 CFR Part 1, Section 1.5(e).

We have begun processing your request and anticipate that a determination to grant or deny access will be made by the response date shown above. The officer responsible for making such a determination is the Chief, Disclosure Staff, or his delegate.

5 USC 552 provides that any person making a request for records shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with applicable time limit provisions.

We suggest, however, that in the event a response has not been received within a reasonable period after the anticipated response date, it may be advantageous to contact the person identified above to determine the status of your request.

Sincerely yours,

Chief,
Freedom of Information Branch

NOTICE OF TIME EXTENSION

Date:

Person to Contact:

Contact Telephone Number:

Control Number:

Your Letter Dated:

Extended Response Date:

Every effort has been made to complete the processing of your request for access to records of the Internal Revenue Service by the date previously indicated. Unfortunately, unusual circumstances, as checked, necessitate that the response date be extended as shown above.

The need to search for and collect the requested records from field facilities in other locations.

The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records.

The need for consultation with another agency having a substantial interest in the determination of the request or among two or more constituent units within the Department of the Treasury or within a constituent unit thereof.

This extension is made in accordance with 31 CFR Part 1, Section 1.5(1)(1).

Additional information on the status of your request may be obtained by contacting the person identified above.

Sincerely yours,

Chief,
Disclosure Staff

INVITATION TO A VOLUNTARY EXTENSION OF TIME

Date:

Person to Contact:

Contact Telephone Number:

Control Number:

Your Letter Dated:

Despite our efforts to process your request for access to records of the Internal Revenue Service within the anticipated response date, or the extended response date, difficulties encountered in attempting to locate and evaluate the records requested necessitate additional time.

Our search for the records will continue and you will be advised of the results as soon as possible. We hope that you will agree to a voluntary extension of time in which to locate the records. Such voluntary extension requires no action on your part and will not constitute a waiver of your right to appeal any denial of access ultimately made or your right to appeal in the event of failure comply with the time extension granted.

We must, however, advise you in accordance with 31 CFR Part 1, Section 1.5(g)(4) that you may consider this notification a denial of access within the meaning of Section 1.5(g)(3), and immediately exercise your right of administrative appeal.

We are enclosing Notice 393, which contains important information concerning your appeal rights. Should you wish additional assistance in making an appeal or information concerning the status of your request, please contact the person identified above.

Sincerely yours,

Chief,
Disclosure Staff

EXHIBIT 7

INFORMATION CONCERNING DETERMINATION TO WITHHOLD RECORDS EXEMPT FROM THE FREEDOM OF INFORMATION ACT - 5 U.S.C. 552.

Appeal Rights

At any time within 35 days after the date of a determination to withhold records (in whole or in part or subject to conditions or exceptions) or, if some records are released at a later date, the date on which the last records were released, an appeal may be filed to the Commissioner of Internal Revenue. The appeal must be made in writing and signed by the appellant, be delivered to the Office of the Commissioner of Internal Revenue, reasonably describe the records requested to which the appeal pertains, set forth the address where the appellant desires to be notified of the determination on appeal as to whether the request will be granted, specify the date of the request and the date of the letter denying the request, and petition the Commissioner to grant the request for records.

To expedite delivery an appeal made by mail should be addressed to:

Commissioner of Internal Revenue
Ben Franklin Station
Post Office Box 929
Washington, D. C. 20044

Judicial Review

If a request for records is denied upon appeal, or if no response is made to an appeal within the legally permitted period, the person making the request may commence an action in a U. S. District Court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District Court for the District of Columbia.

Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. Delivery of process upon the Internal Revenue Service must be directed to:

Commissioner of Internal Revenue
Attention: CC:A:OS
1111 Constitution Avenue, N.W.
Washington, D. C. 20224

The burden in such an action will be upon the Internal Revenue Service to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed. See Treasury Department Regulations 31 CFR Part 1 for further details.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552 does not apply to matters that are -

(b)(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

Statutory Prohibitions Against Disclosure

A number of laws exist which contain provisions specifically prohibiting the disclosure of certain information in order to protect the public's rights of privacy. Among these are:

26 U.S.C. 6103 - Restricts the availability of tax returns and tax return related information concerning Income Taxes, Estate and Gift Taxes, and certain Excise Taxes, except as provided. The definition of the term "return" is clarified by regulations appearing at 26 CFR 301.6103, which contain detailed provisions on the availability of tax returns.

26 U.S.C. 7213 - Prohibits the divulgence of the amount or source of income, profits, losses, expenditures, or any particular thereof from any income return, and prohibits the divulgence of the operations, style of work, or apparatus of any manufacturer or producer visited by an officer or employee of the United States in the discharge of his official duties.

18 U.S.C. 1905 - Prohibits the disclosure of any information coming to an officer or employee of the United States by reason of any examination or investigation made or any report or record filed, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation, or association, except as authorized by law.

5 U.S.C. 552a - Safeguards individual privacy from the misuse of Federal records and prescribes conditions of disclosure including that no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be required under 5 U.S.C. 552; or as otherwise provided (effective September 27, 1975).

EXHIBIT 8

INVOICE NO.
DATE OF INVOICE
DATE OF REQUEST

FREEDOM OF INFORMATION INVOICE

MAILING ADDRESS:

DESCRIPTION OF RECORDS PROVIDED

TYPE OF CHARGE	UNIT PRICE	QUANTITY	TOTAL
Photocopies, per page	$ .10		
Certification of photocopies, per certification	1.00		
Printed material, per 25 pages or fraction thereof	.25		
Records search, per hour	3.50		

TOTAL COST

Less: Amount submitted with request

AMOUNT DUE

SIGNATURE	TITLE

Please return yellow copy of this Invoice with your remittance to:

Chief, A:F:A F
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D. C. 20224

Form M-6001 (Rev. 11-74) GPO 883-775 TREASURY DEPARTMENT INTERNAL REVENUE SERVICE

Internal Revenue Service

Hand-Carry

Please call:

Extension:

Freedom of Information

Priority Correspondence

5 USC 552 requires that Freedom of Information Act requests be answered within ten working days of receipt.

This response must be signed by: _____

The Civil Service Commission may recommend disciplinary action against an employee primarily responsible for withholding records under circumstances found by a court to be arbitrary or capricious.

This response constitutes a ☐ Grant ☐ Denial ☐ Partial Denial of records requested pursuant to the Freedom of Information Act.

To: Name	Symbol	Room	Concur as Prepared	Reviewed w/o Comment	Revision Proposed

Remarks:

From	Phone	Date

Form M-5980 (Rev. 1-75)

Department of the Treasury - Internal Revenue Service

Checklist for Response to FOI Act Request

- Reference to Incoming Letter
  - a. Date.
  - b. General description of documents requested.
- Determination
  - a. Record does not exist or not required to be compiled.
  - b. Granting Request
    - (1) Statement of approval.
    - (2) Invoice for fees.
  - c. Denying Request
    - (1) In whole or part.
    - (2) discloseable portion unreasonably segregable.
    - (3) Reason for not granting request in full.
- Assertion of Exemptions
  - a. Citation of Act and applicable exemption subsection.
  - b. Assertion of exemptions and denial of request.
- Appeal Rights
  - a. Enclosure of Notice 393.
  - b. Location of records denied.
- Cover Sheet-Hand-Carry (Form M5980)
  - a. Persons with whom response is to be coordinated.
  - b. Under remarks
    - (1) Synopsis of the recommended reply.
    - (2) Highlights of case as warranted.
    - (3) Any item you wish to call attention to.

ote 1. Add statement where applicable if inspection is requested.

2. Copy of response to district for information or inspection purposes.

(21)00 FREEDOM OF INFORMATION

(21)10 Background

Comprehensive instructions with respect to disclosures required by 5 U.S.C. 552 (Freedom of Information Act) are contained in Manual Supplement 1(19)G–32. and Amends. 1 through 4, thereto, dated May 25, 1967, June 27, 1967, August 25, 1967, October 25, 1967, and February 27, 1970, respectively. This Chapter deals primarily with requests which, pursuant to section (a)(3) of the Act are for indentifiable records which are not required to be published or otherwise be made available under sections (a)(1) or (a)(2) of the Act. (See section 601.702(c) of the Regulations.)

(21)20 General

Section (a)(3) of the Act states: "(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

(21)30 Procedures to be Followed

(1) Regional and district offices or National Office components receiving requests for records or material for which disclosure instructions have not been previously issued (e.g., this Handbook, IRM 1240, Delegation Orders 70, 83 and 86, etc.), and which have not been made available in the reading rooms should promptly acknowledge receipt of the request and notify the requester that his request has been forwarded for the attention of the Disclosure Staff, Office of Assistant Commissioner (Compliance), CP:D, for consideration, and that he will receive written notice of the decision reached.

(2) Regional and district officers which deny a request, pursuant to disclose instructions issued by the Commissioner must advise the inquirer that he may appeal the decision to the Commissioner, Attention: CP:D. Please ensure that these appellate rights are made known to inquirers in any cases where, pursuant to authorizations cited in (1) above, a denial is issued.

(3) Field offices are to immediately forward such requests, including a copy of the record, if available, or a description if the record is too voluminous for copying. The district office should transmit a copy of the request and related file to the Regional Commissioner for information.

(4) The Disclosure Staff, after obtaining the concurrence of the Division Directors involved, will promptly prepare a reply for the *signature* of the Assistant Commissioner (Compliance) advising the requester whether or not disclosure is authorized (with proper notice of his appeal rights, if denied), with a copy being sent to the Regional Commissioner and District Director involved. Replies will advise the requester of the rate of charge for searching and reproduction costs for the record requested (when the request is being granted) and will be routed through the National Office components involved in the request, for review and concurrence.

(5) Any appeal by the taxpayer from the decision of the Assistant Commissioner (Compliance) will be promptly considered, and granted or denied, by the Commissioner, or referred to the Secretary.

(21)40 Charges

Established charges for records searches and for material furnished in response to requests under the Freedom of Information Act are contained in 26 CFR 601.702(b)(3)(iii) and (c)(5). Form 4313, Special Information Services Invoice, is designed for use as a billing document. No charges are prescribed for billing requests for other Federal agencies or for resources required to determine whether requested records are exempt or nonexempt under the Act.

(21)50 Injunction Suits Under Freedom of Information Act 5 U.S.C. 552

(21)51 RESPONSIBILITY OF GENERAL LITIGATION DIVISION, CHIEF COUNSEL

The General Litigation Division, Chief Counsel, National Office, has the responsibility within the Internal Revenue Service for the handling of legal problems arising under the Act and will handle all matters in litigation under subsection (a)(3) with the Department of Justice. The General Litigation Division will coordinate with the interested National Office or field components of the Service.

(21)52 EXPEDITIOUS HANDLING

(1) As the Act calls for expeditious handling by Federal district courts of injunction actions under subsection (a)(3), it is important that the General Litigation Division be informed immediately of any such action, accompanied by appropriate factual material, or if such material is not then available, at the earliest possible date. Since the ac-

((21)52 EXPEDITIOUS HANDLING—Cont.)

tion will involve an injunction proceeding, it is possible that the Government may be held to a short period for filing an answer with the court.

(2) Regional and district offices or National Office components receiving summonses, complaints, pleadings, or any other information regardless of source, which indicate that a suit has been filed under the Act should forward the same promptly, without awaiting a request, with a covering memorandum to the Chief Counsel, National Office, Attention: General Litigation Division, CC:GL.

(3) When time is of the essence, Regional Commissioners, Regional Counsel, Regional Inspectors, District Directors, and Service Center Directors may authorize direct referrals by employees to be followed up by the more formal procedures set forth herein.

(4) In the event of any urgency, or if there is an indication that less than two weeks remain in which to file an answer to any pleading, a teletype should be sent or a telephone call made from the office receiving the pleading to the General Litigation Division.

(21)53 INFORMATION REQUIRED

(1) Information furnished to the General Litigation Division in the covering memorandum, or as soon as possible after forwarding the summons or pleading, should include the following:

(a) The title of the case and the docket number.

(b) Date and time of service of the summons and complaint or other pleading and upon whom served.

(c) Location of the Federal district court.

(d) Date answer is to be filed in the court.

(e) Details of any request made by the plaintiff for the records requested, how handled, including date sent to the Disclosure Staff, under the provisions of this Chapter.

(f) A copy of the record demanded by the pleading or a description if the record is too voluminous for copying.

(g) Whether there are any open or pending civil or criminal aspects of cases relating to the taxpayer's request.

(h) Whether the record sought would identify informants; whether it was obtained in confidence; or whether for other reasons it should not be made public.

(i) Names of Service personnel familiar with the demand and any preceding request.

(j) Name and telephone number of the person from whom additional information can be requested.

(21)54 LIMITATIONS

Nothing herein is intended to change or modify instructions as to the authority of the Commissioner to make the final Service decision as to disclosure of information or furnishing of testimony in response to a subpoena or other court order.

manual supplement | Department of the Treasury | Internal Revenue Service | 12G-92

August 20, 1974

Disclosure of Material Under Freedom of Information Act

Section 1. Purpose

This Supplement provides guidelines for disclosure by the National Office of official information under the FOI Act, implementing policy statement P-1-192.

Section 2. Scope

These guidelines cover National Office disclosure of all IRS materials and records other than tax returns and tax return information which the Service is prohibited from disclosing by law and regulations. See Sections 6103 and 7213 of Title 26 and related regulations, and Section 1905 of Title 18. The officials authorized to classify and declassify materials and records are those specified in Delegation Order No. 89 (Rev. 3). Delegation Order No. 70 (Rev. 4) covers authority to release information from leave and payroll records.

Section 3. Guidelines - Internal Revenue Manual

.01 Under the FOI Act all provisions of the Manual will be available to the public unless their release would significantly impede, or nullify, IRS actions in carrying out a responsibility or function. Accordingly, Manual provisions concerning law enforcement matters should be protected from disclosure to the public if publication would hinder the law enforcement process with respect to one or more categories of persons. Manual provisions which constitute law enforcement matters are those which communicate to Service personnel information or instructions relating either to enforcement tactics, methods or procedures or to enforcement tolerances or criteria.

.02 The protectability of tolerances and criteria are normally determined on a sentence-by-sentence basis. However, Manual material describing a law enforcement technique may be protectable in its entirety if it is believed that the disclosure of the entire discussion of the technique would hinder law enforcement, even though disclosure of some part of the discussion of the technique would not have that effect.

.03 In applying this criterion decisions will have to be made concerning whether given segments of Manual provisions covered include statements which either create or determine the extent of the substantive rights and liabilities of a person affected. Such material should be isolated from "law enforcement matters" and disclosed.

.04 The fact that information set forth in Manual material is believed to be generally known, although not published, does not necessarily mean that public release of that information would not hinder law enforcement and, therefore, cannot be classed as "law enforcement matters." A limited disclosure previously made by the Service will not cause the Service to forego the defense of material which constitutes "law enforcement matters." However, a substantial distribution of Manual provisions, as, for example, where they have been published by a tax service may render them unprotectable.

Section 4. Guidelines - Non-Manual Material - Specific Requests

.01 All non-Manual material and records, other than tax returns and tax return information which the Service is prohibited from disclosing by law and regulations, will be available to the public unless their release would significantly impede, or nullify, IRS actions in carrying out a responsibility or function, or would hinder the law enforcement process with respect to one or more categories of persons, or would constitute an unwarranted invasion of privacy. Material and records which would reveal Service allocations of resources

Distribution:

IRM 1200 and 1272

Sec. 4--Cont.

in the enforcement areas, formulas and other criteria for the selection of tax returns for examination, or the deliberative or consultative process in making recommendations or decisions, are examples of such records which may not be disclosed.

.02 Non-Manual material and records may be protectable in their entirety if it is believed that disclosure of the entire document, record, or group of records would conflict with guidelines in .01, above.

.03 In applying the guidelines in .01, above, decisions will have to be made concerning whether segments of non-Manual material and records contain statements which either create or determine the extent of the substantive rights and liabilities of a person affected. Such material should be disclosed if requested.

.04 The fact that information set forth in non-Manual material and records is believed to be generally known, although not published, does not necessarily mean that public release of that information would be required. A limited disclosure previously made by the Service will not cause the Service to forego the defense of material or records which should be protected under the guidelines in .01, above. However, a substantial distribution of such material or records, as, for example, where they have been published by a tax service may render them unprotectable.

Section 5. Obtaining Chief Counsel Opinion

.01 Before releasing any material to the public, a careful preliminary determination should be made as to whether it contains material which should be protected. If the preliminary determination indicates that material which should be protected may be present, the opinion of the Chief Counsel's office (Attention CC:D) should be obtained as to whether the material should be released (in all or in part) or protected. This would not be applicable to FOI Act requests handled by Disclosure Staff, since the Staff's responses are routed through Chief Counsel's Disclosure Division in accordance with established procedures.

.02 In all cases where Chief Counsel's opinion is requested, the requesting official must furnish an explanation of the basis for his opinion as to the need for protection of the material in question under these guidelines.

Section 6. Effect on Other Documents

This amends and supplements IRM 1240 and supplements (21)00 of IRM 1272, Disclosure of Official Information Handbook. This "effect" should be annotated on the text and Handbook with a reference to this Supplement.

Donald C. Alexander

Commissioner

manual
supplement
US Treasury Department Internal Revenue Service

12G-126
1(15)G-97
40G-112
51G-124
68G-11
7(16)G-1
93G-156
(11)2G-7

November 14, 1975

Sections 1 thru 6

Access and Amendment and Accounting of Disclosures--Privacy Act of 1974

Section 1. Purpose

.01 This Supplement provides procedures for IRS employees responding to the following types of requests made under the Privacy Act of 1974, effective September 27, 1975.

1 Requests by individuals for notification and access to IRS systems of records.

2 Requests by individuals to amend IRS systems of records or file statements of disagreement.

3 Requests by individuals for accounting of disclosures of information made from IRS systems of records to third parties.

.02 This also establishes IRM 7(16)00, Publicity and Limitations of EP/EO Material.

Section 2. Background

.01 The Privacy Act of 1974 (Public Law 93-579) created certain restrictions on federal agency recordkeeping as well as afforded individuals certain rights as to records contained in agency systems of records. While there are similarities between the Privacy Act and the Freedom of Information Act, a major distinction can be made in that the Privacy Act affords to an individual certain rights with respect to his or her records which are maintained by a federal agency. The Privacy Act does not afford rights to an individual with respect to another's records or documents and does not afford rights to solicit information relative to an agency's operation or conduct of business. This is left to the Freedom of Information Act.

.02 To implement those individual rights with respect to records, the Department of the Treasury has promulgated and published rules in the Federal Register which, in part:

1 establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her;

2 define reasonable times, places, and requirements for identifying an individual who requests his or her records;

3 establish procedures for disclosure to an individual upon request for records or information pertaining to that individual, including special procedures for dealing with a disclosure of medical or psychological records;

4 establish procedures for reviewing a request to amend a record, making a determination with respect to the request, handling appeals by the individual with respect to denial of a proposed amendment, and establishing such other procedures as may be necessary to allow an individual to exercise his or her rights under the Privacy Act of 1974;

5 establish fee schedules for the costs of copying records which may be charged when an individual seeks such copies;

6 establish procedures for making available to an individual an accounting of disclosures made by the Service, where such disclosures are required to be accounted for under the Act.

Distribution:
IRM 1272, 1273, 1(15)00, 4000, 5100, 6810, 7(16)00, 9300 and (11)200

Section 2.--Cont.

.03 The Service is required to publish in the Federal Register at least annually a notice of the existence, character, and location(s) of each system of records which it maintains.

.04 Disclosure Officers/Coordinators, as well as Service personnel routinely providing information and assistance relative to the Privacy Act, should become familiar with the regulations and the systems of records discussed in .02 and .03, above, as well as the procedures set forth in this supplement.

Section 3. Definitions

.01 A record means any item, collection or grouping of information about an individual that is maintained by an agency including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name or the identifying number, symbol, or other identifying particular assigned to the individual.

.02 A system of records is defined as a group of any records under the control of an agency from which information is retrieved by the name, identifying number, symbol, or other identifying particular assigned to the individual.

.03 An individual is defined as a citizen of the United States or an alien lawfully admitted for permanent residence. The Privacy Act does not apply to businesses, partnerships, corporations, estates or trusts.

.04 A statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

.05 The term "maintain" includes "maintain", "collect", "use", or "disseminate" as they pertain to recordkeeping functions. This term is also used to connote control over and hence responsibility and accountability for systems of records.

Section 4. Procedures for Access to Records

.01 This section provides guidance to Service personnel in handling requests from individuals for notification and/or access to systems of records maintained by the Internal Revenue Service.

.02 Service personnel performing taxpayer assistance duties should make sure Publication 876, Privacy Act Notification, is in the forms rack for easy availability to the public.

.03 Individuals making requests for notification and access to IRS systems of records are responsible for the following.

1 Make such requests in writing, furnish their names and addresses, and sign the requests.

2 Clearly mark the requests "Request for Notification and Access".

3 Insert a statement that the request is being made under the Privacy Act of 1974.

4 Provide their social security number if the system being accessed is accessed by social security number. Requests for records maintained in the name of two or more individuals (e.g., husband and wife) must contain the names, addresses and social security numbers (if necessary) of both individuals.

5 Specify the name and location of the system of records being accessed.

6 Address or deliver requests to the Service official maintaining the system of records.

Section 4.--Cont.

7 Make a separate request for each location for which a system of records is maintained. Only one request is required where two or more systems are maintained at the same location.

8 Indicate whether the requester wishes merely to be notified whether the system contains a record pertaining to the requester; whether he or she wishes to inspect the record in person; or whether he or she wishes to have a copy made and furnished by the Service. If the individual requests a copy, the request must include an agreement to pay the fee for duplication ultimately determined to be due.

9 In the case of records which are maintained by specific periods, individuals should indicate whether they wish notification and access to other than the latest period available. Unless otherwise specified, requests will be deemed to be limited to the latest period available.

(10) In the case of requests for notification and access to material maintained in a system of records which is exempt from notification and access under 5 U.S.C. 552a(k)(2), an individual making a request must establish that he or she has been denied a right, privilege, or benefit that he or she would otherwise be entitled to under Federal law as a result of the maintenance of such material.

.04 Individuals seeking assistance from IRS personnel in preparing requests for notification and access should be advised that they must make their requests in accordance with .02 above. They should be further advised that the Service provides an optional form, Form 5394, "Request for Notification and Access--Systems of Records Privacy Act of 1974" (Attachment 1) for this purpose. Since use of Form 5394 will facilitate processing of requests, Service personnel should encourage its use by individuals seeking assistance in making Privacy Act requests for notification and access.

.05 Service personnel performing taxpayer assistance duties should familiarize themselves with Form 5394 in order to provide assistance in its preparation to requesters. IRS offices providing taxpayer assistance will be furnished with appropriate listings and locations of IRS systems of records as well as the regulations governing the submission and processing of requests.

.06 If the request substantially meets the procedural requirements and is adequate to permit proper processing, the Disclosure Officer/Coordinator may in a particular instance exercise discretion to accept the request as filed.

Section 5. Processing Requests for Notification and Access

.01 The responsible officials will designate Disclosure Officers/Coordinators in each District Office, Service Center, Regional Office, and the National Office to process Privacy Act requests.

.02 All Privacy Act requests for notification and access to IRS systems of records should be routed to the Disclosure Officers/Coordinators on an expedite basis.

.03 Service employees should continue to honor routine requests for information or data available under other procedures (e.g., a taxpayer can request and receive a copy of his income tax return or information relating to the balance due of his account). Individuals shall not be required to submit Privacy Act requests for such data.

.04 Disclosure Officers/Coordinators will establish a control system to ensure that Privacy Act requests are processed as set forth below.

1 If a request for notification and access omits any information which is essential to processing the request, the requester will be advised within ten days (excluding Saturdays, Sundays, and legal public holidays) of the additional information which must be submitted before the request can be processed.

2 If a request for notification and access is being made for records which are not located within the jurisdiction of the receiving IRS office (e.g., a request for a Memphis

Section 5.--Cont.

Service Center record is erroneously sent to the Nashville District Office), the request will be returned promptly to the requester along with the address of the IRS office wherein the records are located.

3 Within 30 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for notification and access, a determination will be made as to whether a requested system of records is exempted from the notification and access provisions of the Privacy Act. The Disclosure Officer/Coordinator will refer to the IRS listing of systems (Attachment 2) and the exemption regulations to determine if a system has been exempted from the Act's provisions. The requester will be advised of the provisions of the Act under which the exemption is claimed and the reasons for the exemption, citing appropriate rules published in the Federal Register, the location where the requested records are situated, and the right to file suit in accordance with 5 U.S.C. 552a (g)(1)(B).

4 If a request for notification or access cannot be processed within 30 days, the Disclosure Officer/Coordinator will advise the requester of the reasons for the delay and of the approximate time when the request can be honored.

5 On a case-by-case basis, the Disclosure Officer/Coordinator may determine that although a system has been exempted under Subsection (k) from the notification and access provisions of the Privacy Act, it would be in the best interest of the Service to make portions or all of the record available. Such determination must be concurred with by the official (District Director, Service Center Director, etc.) designated as the System Manager for the requested system.

6 For all records requested from systems of records, other than those systems exempted under subsection (j)(2), the Disclosure Officer/Coordinator will expeditiously route a copy of the request to the Division Chief, Division Director, or other official responsible for the activity to which the request relates. That official will take the necessary action to comply with the request and return the request with any related documents as quickly as possible to the Disclosure Officer/Coordinator.

7 The Disclosure Officer/Coordinator will review the information furnished by the activity having jurisdiction over the system of records requested to ensure that only information dealing with the requesting individual is furnished to that individual and that the confidentiality of third parties is maintained. Names of other individuals or information relating to other individuals will be expunged from the copy of the record prior to release to the requester.

8 The Disclosure Officer/Coordinator will, as appropriate, advise the requester whether the system contains a record pertaining to the requester (unless the system is exempt), notify the requester of the time and place where inspection of the record can be made, furnish a copy of the requested record to the requester, advising the requester of any copying charges ($.10 per page), if any. No copying charges will be made when the aggregate cost of copying is less than $3.00 or when copies are furnished in response to a request to inspect records when such an inspection is denied because it would not be feasible in a particular case (e.g., a hard copy extract of a computerized file is furnished in lieu of inspection). If the Disclosure Officer/Coordinator estimates that the total fees for costs incurred in complying with the request for copies of records will amount to $50.00 or more, the individual making the request may be required to enter into a contract for the payment of the actual fees with respect to the request before the Service will furnish the copies requested. Payments of fees for copies of records should be made by check or money order payable to the Internal Revenue Service. A separate manual supplement will be issued on billing and deposit procedures.

.05 When access is required to medical records (including psychological records), the Disclosure Officer/Coordinator may determine that the release of such records may be made only to a physician designated by an individual requesting access.

Section 6. Verification of Identity 5

.01 Service employees assisting individuals in making requests for notification and access should verify that the requester is actually the person to whom the record pertains before processing the request. The requester will, therefore, be asked to establish his or her identity by presenting either one document bearing a photograph (such as a passport or identification badge) or two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or a credit card).

.02 Forms 5394, "Request for Notification and Access--System(s) of Records Privacy Act of 1974", or other requests left by individuals with IRS personnel for forwarding to the Disclosure Officer/Coordinator should include or be accompanied by a statement signed by the IRS employee indicating if identity has been established and containing a short resume as to what substantiating documents were reviewed to establish the identity of the requester.

.03 Requests for notification and access received by mail by the Disclosure Officer/Coordinator should not be processed unless the requester has established his or her identity in the request. Identity can be established by a signature, address, and one other item of identification such as a photocopy of a driver's license or other document bearing the individual's signature.

.04 An individual may also establish identity either in person or by mail by providing a notarized statement swearing or affirming to his or her identity and to the fact that he or she understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

.05 Notwithstanding the requirements for identification discussed above, the Disclosure Officer/Coordinator may require additional proof of an individual's identity before action will be taken on any request if the Disclosure Officer/Coordinator determines that it is necessary to do so to protect against unauthorized disclosure of information in a particular case.

.06 A parent of any minor, the attorney in fact of another, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction must, in addition to the identification requirements discussed above, provide adequate proof of legal relationship before he or she may act on benalf of such minor or other individual.

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manual supplement | Department of the Treasury | Internal Revenue Service | 12G-135

January 14, 1976

Treatment of Requests for Records - The Privacy Act of 1974 and The Freedom of Information Act

Section 1. Purpose

This reissues the text of a telegram dated October 9, 1975 concerning the processing of requests by individuals for access to records concerning themselves.

Section 2. Text of October 9, 1975 telegram to All Regional Commissioners, District Directors, Service Center Directors and Regional Inspectors from the Commissioner

01. "Portions of both the Privacy Act of 1974 and the Freedom of Information Act may pertain to requests of individuals for access to records concerning themselves. Apparent inconsistencies between these statutes may result in confusion and variations in availability of records depending upon which Act is cited in the request.

02. "Pending further instructions, absenting a specific designation of the Freedom of Information Act, requests for Internal Revenue Service records concerning the requester should be treated as procedurally subject to the Privacy Act, but substantively subject to both Acts. This is to be achieved insofar as practical by processing such requests in accordance with the Privacy Act, but making certain that records exempt from access under the Privacy Act or portions thereof are not denied unless also exempt under the Freedom of Information Act.

03. "Requests which cite the Freedom of Information Act will be processed in accordance with existing procedures applicable to that Act.

04. "This interim guideline may not prove appropriate in every situation. Officials encountering unusual circumstances which would prompt an alternative treatment should request assistance and authorization from the Chief, Disclosure Staff, National Office."

Section 3. Effect on Other Documents

01. This supplements (21)00 of IRM 1272, Disclosure of Official Information Handbook, which should be so annotated by pen and ink with a reference to this Supplement.

02. This also supplements IRM 1273, Privacy Handbook (to be issued).

Charles A. Gibb
Chief, Disclosure Staff

Distribution:
IRM 1272 and 1273

manual supplement

Department of the Treasury | Internal Revenue Service

17G-292
12G-138
16G-59
1(19)G-85

February 6, 1976

Processing and Accounting for Requests for Material Under the Freedom of Information and Privacy Acts

Section 1. Purpose

This Supplement sets forth the procedures for billing, collecting, and accounting for records furnished under the provisions of the Freedom of Information Act and the Privacy Act.

Section 2. Background

.01 The Freedom of Information Act, as amended by PL 93-502, provides for access by the public to information created or maintained by IRS. It allows for the charging of fees for duplicating or searching records.

.02 The Privacy Act (PL 93-572) provides for access by individuals to information concerning themselves as contained in IRS records. It allows for charging for duplicating such records but does not allow for imposing a search charge.

Section 3. Scope

.01 These instructions apply to all employees involved in receiving and processing requests for material. This includes not only Reading Room personnel and other Disclosure employees but any employee who is authorized to process such requests.

.02 Instructions contained herein also apply to Fiscal Management employees responsible for accounting for related fees.

Section 4. Fees Charged

.01 For material furnished under the provisions of the Freedom of Information Act, the following charges apply:

1 copies of documents in IRS Reading Rooms - each page $.10;

2 copies of documents not available in IRS Reading Rooms - each page $.10 plus search charge;

3 sale of unpriced printed material - each 25 pages or fraction thereof $.25;

4 copies of material in 1 or 2 above to persons using their own copy equipment - no copy charge; and

5 search charges - each hour or fraction thereof $3.50.

.02 Treasury-wide detailed instructions pertaining to FOI charges and situations in which no charges are imposed will continue to be followed in accordance with applicable regulations.

Distribution:
IRM 1272, 1273, 1550, 1717, 1(10)00

Section 4 - Cont.

.03 Fees for material obtained under the Privacy Act are set at $.10 per page except for the follwoing:

1 no charge will be made when the total copying fee is under $3.00;

2 no charge will be made for computer transcripts;

3 no charge will be made to IRS employees for copies of personnel records and similar material concerning themselves; and

4 no charge will be made for the time spent in searching for records.

.04 When the total estimated charge is $50.00 or more, the requester may be required to enter into a contract. This applies to material furnished under either of the Acts.

.05 As in the past, requests for copies of tax returns will be referred to National Archives and Records Service (NARS). Copy fees will be deposited and accounted for by NARS in accordance with ADP Handbook Chapter 320-724.

Section 5. Billing Forms

.01 Form 5423, Invoice for Records Furnished Under the Freedom of Information (FOI) Act or the Privacy Act, is to be used for billing recipients of material. This form has been printed as a six-part snap-out and requires no carbon.

.02 Billing forms are to be prepared by the Disclosure Officer or by his or her designee and distributed in accordance with Section 7 below.

.03 Disclosure Officers may use their own discretion in determining whether to prepare billing forms for "no charge" items. However, provision must be made for keeping a record of the volume of requests, including those for which no charges are made.

.04 In cases where a requester submits an estimated payment with the order and the amount due is not more than $1 above the amount submitted, the requester will not be billed for the additional amount due. For example, if the estimated payment received with the request is $10.00 and if the value of material furnished is $10.80, the customer will not be billed for the additional $.80.

Section 6. Numbering of Billing Documents

.01 Billing documents are to be numbered consecutively by each billing office, beginning a new series of numbers each fiscal year. A "billing office" is the National Office, a regional headquarters office, a district, or a service center.

.02 An alphabetic prefix is to be used to segregate the various types of transactions, as follows:

1 FOI Invoices - Use prefix "F"

Section 6 - Cont.

2 Privacy Act Invoices - Use prefix "P"

.03 As indicated in Section 4.04, a contract may be required when the total estimated charge exceeds $50.00. When contracts are used, proceed as follows:

1 the originating office will assign contract numbers, using a separate series of sequential numbers. A new series is to be started each fiscal year;

2 the contract number is to be shown on billing documents in the space provided for the mailing address;

3 the original of the completed contract is to be furnished to the requester. One copy will be forwarded to Fiscal Management Office and one copy will be retained in the originating office.

Section 7. Distribution of Billing Documents

.01 Copies of invoices used for billing purposes will be distributed when the material has been sent or is ready to send to the requester. Distribution will be as follows:

1 white copy - mail to requester for his or her retention;

2 blue copy - (a) mail to requester unless he or she submitted full payment with the request (the requester will then mail this copy to Fiscal Management with payment);

(b) if payment is received with the placement of the order, the originating office will send this copy to Fiscal Management with the payment (see instructions for disposition of gold copy in 6 below);

(c) if the material is being furnished at no charge, annotate this copy and retain it for office files (do not send it to Fiscal Management);

3 green copy - may be used as a mailing label in shipping material to the requester;

4 yellow copy - forward to Fiscal Management unless the material is being furnished free of charge (if no charge is to be made, file or dispose of this copy in accordance with local procedures);

5 pink copy - retain in originating office;

6 gold copy - (a) retain in originating office unless the requester has submitted a partial payment or overpayment along with the request; and

Section 7 - Cont.

(b) if requester has submitted a partial payment or overpayment with his or her request, send this copy, with necessary annotations, to Fiscal Management.

Section 8. Collections

.01 Fiscal Management in the regions and National Office is responsible for accounting for fees collected or due.

.02 In most cases, requesters will mail their payments directly to the Fiscal Management office identified on the billing form. Remittances will be deposited in accordance with standard deposit procedures, using SF 219, Certificate of Deposit, or other suitable deposit form and Form 2221, Schedule of Collections.

.03 In the event that checks or money orders are received in districts or service centers in payment for materials furnished, they may be promptly mailed to Fiscal Management for deposit or may be handled as courtesy deposits for Fiscal Management. (See .05 below for cash receipts).

.04 Any office receiving checks should scan such checks to determine that they are properly prepared before submitting them for deposit. This would include a review to see that the check has been made payable to "Internal Revenue Service", and that the amount, date and signature are properly shown.

.05 Cash received by districts or service centers will be promptly deposited as a courtesy deposit for the appropriate Fiscal Management office. An advance copy of the related Form 2221, Schedule of Collections, should be promptly forwarded to Fiscal Management. Upon receipt of the confirmed copies of the Certificate of Deposit from the Federal Reserve Bank or other depository, the district or service center will attach the triplicate and quadruplicate copies to the original of the Form 2221 and forward them to Fiscal Management.

.06 With the exception of contents of coin-operated photocopiers, payments received in Reading Rooms are to be delivered to Fiscal Management on a daily basis.

.07 Contents of Coinfax machines are to be forwarded to Fiscal Management for deposit at least once a week. More frequent deliveries are to be made if the contents are $50 or more.

.08 When contents of coinboxes are to be turned over to Fiscal Management for deposit, the Reading Room employee will prepare a Form 5420, Invoice for Records Furnished Under the Freedom of Information (FOI) Act and the Privacy Act, as a record of the transaction. These forms will be prepared and processed as follows:

1 show invoice number, date, signature, title, office, and telephone number in the designated spaces;

2 show the dollar amount on the "Total" line;

3 beginning and ending meter readings are to be shown in the space normally used for description of records furnished;

Section 8 - Cont.(1)

4 show the words "proceeds from Coinfax machine" in the space normally used for the mailing address;

5 receipts, along with the white, yellow and blue copies of the billing document, will be delivered to the appropriate Fiscal Management office;

6 Fiscal Management will verify the amount received with the amount indicated on the related billing document. If the amounts agree, the white copy of the billing document will be initialed, date stamped, and returned to the Reading Room. If there is a discrepancy between the amount actually received and that shown on the billing document, Fiscal Management will contact the Reading Room to request a change to the billing document or other appropriate action;

7 Fiscal Management will file the blue and yellow copies of the billing documents after the white copy has been verified as correct;

8 Fiscal Management will deposit the receipts in accordance with normal procedures; and

9 the Disclosure Officer or other designated employee will occasionally witness the counting of cash in the Reading Room and preparation of the related billing document, without giving prior notice of the intent to do so. The related meter readings will also be verified. The individual making the unannounced verification will initial and date the related billing form to indicate that such a verification occurred.

.09 Payments received which exceed the amount due are to be deposited in the usual manner. Fiscal Management will then take the necessary steps to issue a refund to the requester provided the refund is for more than $1.00. Refunds of $1.00 or less will be made only when specifically requested by the person to whom it is due.

.10 Checks which are improperly executed and cannot be deposited are to be returned to the requester with the necessary explanation and a request for proper payment.

.11 All cash, checks, money orders, etc. are to be properly safeguarded in accordance with the provisions of IRM 1(16)41, Physical and Document Security Handbook.

.12 Any office receiving moneys in any form should maintain a log or other suitable record of such receipts. The record will include the name of the person making the payment, check number or the word "cash", as applicable, amount, and the date received. An appropriate notation is also to be made to show when and how receipts were deposited or turned over for deposit (for example, "delivered to Fiscal Management" or "courtesy deposit" and the date).

.13 In the event that a payment is received prior to issuance of the related bill, deposit is not to be delayed pending preparation of necessary documents. In sending such payments to Fiscal Management include a note to identify the bill number that will be assigned. This is to enable Fiscal

Section 8 - Cont. (2)

Management to determine what the payment is for and to permit subsequent association of the payment and billing document.

.14 Collections are to be deposited to the following general fund (miscellaneous receipts) accounts:

1	Privacy Act	20-2419.2
2	Freedom of Information	20-2419.3

Section 9. Fiscal Management Processing of Billing Documents

.01 Yellow copies of invoices on which payments have not been received will be placed in pending files to await receipt of payment.

.02 When the blue copy is received with the payment, the blue and yellow copies will be matched and filed together in a "closed" file.

.03 When there is no yellow copy in the file to match a blue copy received with a payment, contact the appropriate Disclosure Officer to determine whether it has been sent. If the yellow copy has been sent but cannot be located (lost in transit, for example), make appropriate notations on the blue copy and "flag" it in some way so that if and when the yellow copy comes in it may be associated with the blue. Extreme care must be taken to see that yellow copies, in these cases, are not treated as unpaid accounts.

.04 If a payment is received and is not accompanied by a blue invoice copy, compare the amount of the payment with the amount shown on the yellow copy. Make the necessary notations on the yellow copy and place it in the "closed" file.

.05 If a payment is received and if there is neither a blue nor a yellow copy of an invoice on hand for the individual submitting the payment, try to determine which office processed the request (based on return address shown on an envelope or other information available). Request the originating office to furnish a copy which will be annotated by Fiscal Management to indicate payment.

.06 Collections of accounts receivable will be made in accordance with the procedures outlined in 46(11).4, of IRM 1717, Administrative Accounting Handbook.

.07 Fiscal Management should attach copies of contracts to related billing documents. Any contracts on hand for which billing documents have not been received within three or four weeks should be followed up by contacting the originating office. If the requested records have been mailed, the originating office should be asked to furnish a billing copy promptly.

Section 10. General Ledger Accounts

.01 At the end of each month, before the books are closed, all unpaid invoices will be added to obtain the total amount due. Amounts so determined are to be recorded to the general ledger accounts described below. Such entries are reversed in the following month.